POINTS AND AUTHORITIES

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Week Of	Topic	Guest	30 min General
May 30, 2017	Misconduct by Jurors During Voir Dire and Trial	Shirali Giridharadas Brandon Hamburg Elaine Ma	

This P&A addresses particular juror misconduct issues that occur during voir dire and the evidentiary portion of trial, as opposed to juror misconduct in deliberations.

I. How Juror Misconduct Gets Raised Procedurally

A. Penal Code 1098 -- at trial or during deliberations

The trial court may discharge a juror for good cause at any time, including during deliberations, if the court finds that the juror is unable to perform his or her duty. (§ 1089.)

Must an evidentiary hearing always be conducted?

● Not every incident involving a juror's conduct requires or warrants further investigation. The decision whether to investigate rests with the sound discretion of the trial court. A hearing is required only where the court possesses information which, if proven to be true, would constitute good cause to doubt a juror's ability to perform his duties and would justify his removal from the case. (*People v. Manibusan* (2013) 58 Cal.4th 40, 53.)

Must jurors being investigated for possible misconduct be advised of right to counsel?

● Highly unlikely. This question was addressed but not answered by the Supreme Court in *People v. Weatherton* (2014) 59 Cal.4th 589. The trial court, while conducting an evidentiary hearing as to whether four jurors committed misconduct, advised the jurors of their right against self-incrimination and told them that attorneys were present to represent them. Three of the jurors invoked their Fifth Amendment rights and the court granted them use immunity. (*Id*. at p. 595.) The Supreme Court said this in a footnote: "We have been unable to find another instance in which a court investigating possible jury misconduct similarly advised jurors of their Fifth Amendment rights and offered to appoint an attorney. Given the speculative nature of the nascent Fifth Amendment issue in these circumstances and lacking some articulation of a crime the jurors may have committed, the court's decision to proceed in this fashion threatened to undermine its ability to acquire complete and accurate information, untainted by jurors' now-

heightened concerns about their own interests. Because we reverse the judgment for prejudicial juror misconduct, however, we have no occasion to pass on the propriety of the court's decision to proceed in this manner." (*Id*. at p. 596, fn. 6.)

B. Motion for a New Trial – post verdict

After the verdict has been rendered, but before judgment entered, the defendant may bring a motion for a new trial under Penal Code section 1181.

A new trial may be granted if the jury "has been guilty of any misconduct by which a fair and due consideration of the case has been prevented." (Pen. Code, § 1181, subd. (3)), or when "the jury has received any evidence out of court, other than that resulting from a view of the premises, or personal property." (Pen. Code, 1181, subd. (2).)

When a party seeks a new trial based upon jury misconduct, a court must undertake a three-step inquiry. The court must first determine whether the affidavits supporting the motion are admissible. If the evidence is admissible, the court must then consider whether the facts establish misconduct. Finally, assuming misconduct, the court must determine whether the misconduct was prejudicial.

The affidavits supporting the motion must conform to Evidence Code section 1150, subdivision (a), which distinguishes, "between proof of overt acts, objectively ascertainable, and proof of the subjective reasoning processes of the individual juror, which can be neither corroborated nor disproved." (*People v. Steele* (2002) 27 Cal.4th 1230, 1261.) The "only improper influences that may be proved under Evidence Code section 1150 to impeach a verdict, therefore, are those open to sight, hearing, and the other senses and thus subject to corroboration." (*Ibid*.) Evidence that violates section 1150(a) is inadmissible and irrelevant. (*Id*. at p. 1264.)

Must an evidentiary hearing always be conducted?

- The trial judge has the discretion to determine the truth of the allegations and to allow jurors to testify. "This does not mean, however, that a trial court must hold an evidentiary hearing in every instance of alleged jury misconduct. The hearing should not be used as a 'fishing expedition' to search for possible misconduct, but should be held only when the defense has come forward with evidence demonstrating a strong possibility that prejudicial misconduct has occurred. Even upon such a showing, an evidentiary hearing will generally be unnecessary unless the parties' evidence presents a material conflict that can only be resolved at such a hearing." (*People v. Hedgecock* (1990) 51 Cal.3d 395, 415.)

II. Examples of What is and What is Not Prejudicial Jury Misconduct

● **Concealment of Relevant Facts During Voir Dire**

A. General Principles

1. "It is misconduct, and therefore presumptively prejudicial, for a juror to conceal relevant facts during the jury selection process." (*People v. Merriman* (2014) 60 Cal.4th 1, 95.)

2. The presumption of prejudice is rebutted, and the verdict will not be disturbed, if a reviewing court concludes after considering the entire record, including the nature of the misconduct and its surrounding circumstances, that there is no substantial likelihood that the juror in question was actually biased against the defendant. (*Id*. at p. 95.)

3. Although *intentional* concealment of material information by a potential juror may constitute implied bias justifying his or her disqualification or removal, failures to disclose that are merely inadvertent or unintentional are not accorded the same effect. (*People v. McPeters* (1992) 2 Cal.4th 1148, 1175.)

4. "[A]n honest mistake on voir dire cannot disturb a judgment in the absence of proof that the juror's wrong or incomplete answer hid the juror's actual bias." (*In re Hamilton* (1999) 20 Cal.4th 273, 300.) "Good faith when answering voir dire questions is the most significant indicator that there was no bias." (*Ibid*.)

5. " Whether a failure to disclose is intentional or unintentional and whether a juror is biased in this regard are matters within the discretion of the trial court. Except where bias is clearly apparent from the record, the trial judge is in the best position to assess the state of mind of a juror or potential juror on voir dire examination." (*People v. McPeters*, *supra*, 2 Cal.4th at p 1175.)

B. Case Examples

1. *People v. Merriman* (2014) 60 Cal.4th 1 (*inadvertent failure to disclose)*

In this death penalty case, the juror failed to mention in her juror questionnaire or during voir dire her relationship to a deputy sheriff in the county where the trial was occurring. The juror had been asked no questions about the particular topic during voir dire. The deputy was her daughter's sister-in-law, whom the juror saw infrequently. In a hearing to investigate the issue, the deputy testified that she saw the juror maybe once a year at family gatherings. (*Merriman*, 60 Cal.4th at p. 90.)

The Supreme Court agreed with the trial court that the relationship between the juror and the deputy was distant, and questioned whether the juror and the deputy could even be considered

"relatives." But even if the deputy should have been included in the juror's list of relatives in law enforcement, " 'an honest mistake on voir dire cannot disturb a judgment in the absence of proof that the juror's wrong or incomplete answer hid the juror's actual bias.' " (*Id*. at p. 97.)

The Supreme Court concluded that the answers given by the juror at the hearing showed the juror's failure to mention the deputy was an inadvertent omission. When asked by the court, the juror immediately told the court that she was acquainted with the deputy. Because of the very attenuated relationship, it appeared the deputy was not someone who would come to mind when the juror was asked to identify relatives in law enforcement. Nor did the court or parties ask questions of her during voir dire that would have clarified for her they types of relationships of interest to them. The Supreme Court stated that " 'good faith when answering voir dire questions is the most significant factor that there was not bias,'" and here there was no indication that the juror acted in bad faith during the voir dire. (*Id*. at p. 97.)

2. *People v. Blackwell* (1987) 191 Cal.App.3d 925 (*intentional failure to disclose*)

A wife was on trial for murdering her alcoholic husband who allegedly beat her, and the wife's defense was that she suffered from battered wife syndrome. The juror alleged to have committed misconduct responded "no" to questions asking whether anyone in her family suffered from alcoholism and whether she had ever experienced domestic violence. (*Id*. at pp. 927–928.) But in a new trial motion brought after the defendant was found guilty, the juror stated she had an abusive ex-husband who was an alcoholic, and further stated she felt the defendant should have handled the situation (as did the juror) by leaving, without resorting to violence. (*Id*. at pp. 927–928.)

The Court of Appeal found the juror provided false statements as to matters about which she was aware, and there was no reason to believe her false statements resulted from oversight or forgetfulness, thus compelling the inference that her false answers were intentional and deliberate. (*Id.* at pp. 928–930.) The juror's bias was demonstrated by her belief that when confronted with a situation similar to the defendant's, she was able to escape an abusive husband without resort to physical violence or self-defense. (*Id.* at p. 931.)

● Prejudging the Case

A. General Principles

"A criminal defendant has a constitutional right to a trial by unbiased, impartial jurors. That means 12, not 11, impartial and unprejudiced jurors. A conviction cannot stand if even a single juror has been improperly influenced. Jurors must be admonished not to "form or express any opinion about the case until the cause is finally submitted to them." Prejudgment constitutes serious misconduct, raising a presumption of prejudice. The presumption is rebutted if the entire record indicates there is no reasonable probability of prejudice, i.e., no substantial likelihood that one or more jurors were actually biased against the defendant. (*People v. Weatherton* (2014) 59 Cal.4th 5989, 598, internal citations omitted.)

B. Case Examples

1. *People v. Weatherton* (2014) 59 Cal.4th 589 (*prejudging occurred*)

A jury convicted the defendant of two counts of first degree murder with special circumstances as well as other charges. The jury returned a verdict of death. Because juror misconduct during the guilt phase raised a substantial likelihood of actual bias, the Supreme Court reversed the judgment. A juror identified as P.P. repeatedly talked about the case outside deliberations, in defiance of the trial court's repeated admonitions. He discussed the case during his daily commute, at lunch, during cigarette breaks, in court hallways, and in elevators. He telephoned non-deliberating jurors during deliberations, reporting what was occurring in the jury room. Multiple jurors testified that, long before the prosecution rested its case, P.P. conveyed a belief in defendant's guilt. He also told jurors, both before and during deliberations, that defendant deserved the death penalty. Jurors testified that, on the first day of trial, P.P. stated that the testimony of a surviving victim in the case was dispositive on guilt. (*Id*. at p. 599.) The Supreme Court concluded that these statements demonstrate that this juror prejudged the case long before deliberations began and while much evidence had yet to be admitted. (*Ibid.*)

Additionally, the Supreme Court said that the evidence also established that P.P. abandoned the role of an impartial juror, acting instead as an advocate. He repeatedly told the other jurors that defendant was guilty, that he deserved the death penalty. The Supreme Court said that P.P.'s transformation from impartial fact finder to combative advocate before deliberations began was separate and serious misconduct. (*Id*. at p. 600.)

Note: The Supreme Court in a footnote stated: "We do not imply that jurors who argue forcefully for an outcome once deliberations begin act improperly." (*Id*. at p. 600, fn. 14.)

2. People v. Allen (2011) 53 Cal.4th 60 (*prejudging did not occur*)

During deliberations, the juror said words to the effect, "When the prosecution rested, she didn't have a case." The foreperson reported the juror's words to the court, after which an evidentiary hearing was held. The juror admitted making the statement, but denied that he had made up his mind before deliberations. The trial court, over the defendant's objection, discharged the juror for having prejudged the case.

The Supreme Court concluded that, based on the record in the case, the trial court erred, and the Supreme Court reversed the guilt and penalty phase verdicts. The juror's comment, however phrased, was subject to some interpretation. But the juror's statement was made on the second day of deliberation, not during the presentation of evidence. The record does not demonstrate that the juror refused to listen to all of the evidence, began deliberations with a closed mind, or declined to deliberate. Indeed, other evidence indicates that he was participating. He held a strong opinion about the prosecutor's case, which may have annoyed other jurors, but that is not dispositive evidence that he prejudged the case. (*Id*. at pp. 73-74.)

The Supreme Court said this: "The reality that a juror may hold an opinion at the outset of

deliberations is, as we have noted, reflective of human nature. It is certainly not unheard of that a foreperson may actually take a vote as deliberations begin to acquire an early sense of how jurors are leaning. We cannot reasonably expect a juror to enter deliberations as a *tabula rasa*, only allowed to form ideas as conversations continue." (*Id*. at p. 75.)

"The requirement of a unanimous criminal verdict . . . rests on the premise that each individual juror must exercise his or her own judgment in evaluating the case." (*Id*. at p. 71.) The fact that a juror is unimpressed by the strength of the evidence and unpersuaded by colleague's assertions during deliberations does not amount to prejudgment of the case. (*Id.* at p. 76.)

● Discussing Trial Issue with Non-Juror [prior to deliberation phase]

A. General Principles

Jurors "convers[ing] among themselves, or with anyone else, . . . on any subject connected with the trial" is juror misconduct. (Pen. Code, § 1122, subd. (a)(1).) Juror misconduct, such as the receipt of information other than what is presented at trial, generally raises a rebuttable presumption of juror bias and that the defendant suffered prejudice. (*In re Hamilton* (1999) 20 Cal.4th 273, 295-296.) Even inadvertent exposure to out-of-court information may constitute misconduct giving rise to the presumption of prejudice. (*People v. Cummings* (1993) 4 Cal.4th 1233, 1331.)

"Bias may appear in either of two ways: (1) if the extraneous material, judged objectively, is so prejudicial in and of itself that it is inherently and substantially likely to have influenced a juror; or (2) even if the information is not 'inherently' prejudicial, if, from the nature of the misconduct and the surrounding circumstances, the court determines that it is substantially likely a juror was 'actually biased' against the defendant." (*People v. Nesler* (1997) 16 Cal.4th 561, 578–579.) The surrounding circumstances include "the nature of the juror's conduct, the circumstances under which the information was obtained, the instructions the jury received, the nature of the evidence and issues at trial, and the strength of the evidence against the defendant." *(In re Carpenter* (1995) 9 Cal.4th 634, 654.) [

B. Case Examples

1. *People v. Loker* (2008) 44 Cal.4th 691 (*misconduct, but not prejudicial)*

Juror conversed in the hall outside of the courtroom with a man he knew to be part of the proceedings, but did not know how the man was involved. They talked about their prior military service and the man's upcoming surgery. The juror learned later that the man was the father of one of the murder victims. The juror alerted the court.

The trial court found the juror's conversation with a person he knew was involved in the proceedings was misconduct, but concluded that no prejudice resulted given the content of the discussion, and the manner in which it occurred. The Supreme Court agreed. It is misconduct for a juror to communicate with anyone associated with the case. "This conversation, however,

could not have been prejudicial. The two men discussed the fact that they had both been Marines, and Mr. Paul's impending surgery. Such a conversation is not, judged objectively, 'inherently and substantially likely to have influenced the juror.' [Citations.] Nor does it objectively demonstrate a substantial likelihood, or even a reasonable possibility, of actual bias." (*Id*. at pp. 754-755.)

2. *People v. Jackson* (2016) 1 Cal.5th 269, 334) *(misconduct, but not prejudicial)*

As to a juror's contact with a witness, the Supreme Court in this *Jackson* case stated: " 'Contact between a juror and a witness may be nonprejudicial if there is no showing that the contact related to the trial.' " (*People v. Cowan* (2010) 50 Cal.4th 401, 507; see also *People v. Pierce* (1979) 24 Cal.3d 199, 208 [suggesting that contact between a juror and a witness involving 'mere social amenities unrelated to the trial' is not necessarily prejudicial].) The trial court is in the best position to observe the jurors' demeanor and determine whether such bias existed. (See *People v. Debose* (2014) 59 Cal.4th 177, 202)." (*Jackson*, s*upra*, at p. 334.)

3. *People v. Cissna* (2010) 182 Cal.App.4th 1105 (*prejudicial misconduct*)

The defendant was charged with eight counts of sexual molesting his granddaughter. The jury reached a guilty verdict on only one count, and the other charges were dismissed after the jury reported it was deadlocked. In a motion for a new trial, the defendant contended the verdict should be set aside based on juror misconduct. Juror D. and his (non-juror) friend G. talked every day about the case at lunch, starting from the first day of testimony. They discussed witness testimony and evidentiary items, and the strength and weaknesses of the prosecution case. They also discussed the import of the defendant's decision not to testify. In his declaration submitted with the motion for a new trial, G. stated that he told Juror D. that he did not believe the evidence was sufficient to support a guilty verdict. (*Id*. at pp. 1114-1115.)

In the motion for a new trial, the prosecution conceded, and the court found, that Juror D. had engaged in misconduct by discussing the case with his friend. But the trial court concluded the record showed Juror D. was not biased.

The Court of Appeal reversed the conviction based on juror misconduct, concluding the record showed a substantial likelihood of juror bias. The Court of Appeal stated: "Juror bias exists if a juror is incapable or unwilling to decide the case solely on the evidence before it. [Citation]. By discussing the merits of the case every single day with G., Juror D. engaged in conduct that persistently disregarded the court's instructions. Juror D.'s pervasive, deliberative-type communications with G. create a substantial likelihood that he was unwilling to decide the case solely on the evidence and instructions at trial. Also, because the discussions included matters that carried a high potential of detriment to the defense, there is a substantial probability that Juror D.'s impartiality towards the defendant was compromised." (*Id*. at pp. 1122-1123.) The Court of Appeal concluded the presumption of prejudice had not been rebutted. (*Id*. at p. 1123.)

● Reading Information about the Case During the Evidentiary Portion of Trial

A. General Principles

The principles are the same as learning about information from a nonjuror or being influenced by a nonjuror after discussing the case with him or her (above). Receipt of information other than what is presented at trial generally raises a rebuttable presumption of juror bias and that the defendant suffered prejudice.

B. Case Examples

1. *People v. Holloway* (1990) 50 Cal.3d 1098 (*prejudicial*)

The defendant in *Holloway* was tried and convicted of the first degree murders of two sisters. At the time of trial, the defendant was on parole from prison based on his assault of a woman with a hammer. The trial court ruled that the defendant's prior criminal history was not admissible. On the second day of trial, one juror read an article describing the defendant's criminal record for assaulting the woman with the hammer. The juror did not tell other jurors about the article until after deliberations. When the information came to the trial court's attention, it held a hearing and found there was probably no misconduct and there was no indication of prejudice to the defendant. (50 Cal.3d at pp. 1106-1108.)

The Supreme Court disagreed with the trial court's decision, and found the misconduct was prejudicial. "The content of the article was extremely prejudicial; it revealed information about defendant's prior criminal conduct that the court had ruled inadmissible because of its potential for prejudice. The court and counsel had gone to great lengths to avoid having the jury learn of defendant's prior conviction for having assaulted a woman with a hammer. Their efforts were to no avail as to one juror-a fact they did not learn until after it was too late to take any curative steps." (50 Cal.3d at p. 1110.)

The *Holloway* court found its situation similar to *People v. Thomas* (1975) 47 Cal.App.3d 178, in which four jurors read a newspaper story before testimony began that identified the case by name and stated that the defendants alleged partner in the crime had pleaded guilty to the crime and had been sentenced. The article was brought to the attention of the court during trial, and the court questioned the jurors. The court denied a motion for mistrial. The appellate court reversed, finding that the reading of the newspaper article "seriously jeopardized the fairness of the trial" and "the likelihood of prejudicial effect upon the minds of the few jurors who saw the article was obviously substantial." (*Id.* at pp. 181-182.)

2. *People v. Ramos* (2004) 34 Cal.4th 494 (*not prejudicial*)

Although the challenged jurors claimed they did not read certain newspaper articles during trial, the trial court resolved the conflicting declarations submitted with the new trial motion in the defendant's favor. However, the trial court concluded while the jurors committed misconduct, the articles, even if read, were not prejudicial. (*Id*. at p. 520.) The Supreme Court agreed.

The first article reported on the testimony of a prosecution witness. The Court described the article as objective and containing no information the jurors did not hear themselves in the courtroom. The second article described the defendant's behavior while listening to the testimony of this same prosecution witness, including a change in the defendant's facial expression that occurred at one point. The Court stated that because the jury observed firsthand the defendant's behavior and change of expression, there was no substantial likelihood the article influenced the jury negatively. (*Id*. at pp. 520-521.)

Two additional articles described the opening and closing argument. The articles contained nothing that the jury did not hear themselves. The Supreme Court concluded: "We find no reason to overturn the trial court's finding that the jurors' exposure to newspaper articles reporting on defendant's trial did not prejudice the verdict." (*Id*. at pp. 521-522.). (

● <u>Use of the Internet and Social Media</u>

Pen. Code Sec. 1122, subdivision (a) provides that the trial court "shall clearly explain" that as part of the admonishment not to converse, conduct research or disseminate information on any subject connected with the trial, this prohibition applies to "all forms of electronic and wireless communication."

CALCRIM No. 101 provides in part: "Do not share information about the case in writing, by email, by telephone, on the Internet, or by any other means of communication." "Do not use the Internet in any way in connection with this case, either on your own or as a group." "I want to emphasize that you may not use any form of research or communication, including electronic or wireless research or communication, to research, share, communicate, or allow someone else to communicate with you regarding any subject of the trial. [If you violate this rule, you may be subject to jail time, a fine, or other punishment.]"

Code of Civil Procedure section 1209(a)(6) states that the following act is punishable as contempt of court: "Willful disobedience by a juror of a court admonishment related to the prohibition on any form of communication or research about the case, including all forms of electronic or wireless communication or research."

The majority of cases in which jurors improperly obtained information from the Internet (almost all unpublished) concern circumstances in which a juror obtained and shared the information during deliberations, rather than during the evidentiary portion of trial. Below is a published case concerning posting of information during the evidentiary portion of trial on Facebook, and an unpublished case in which the juror tweeted during the trial. The unpublished case is used for information purposes.

1. *Juror Number One v. Superior Court* (2012) 206 Cal.App.4th 854 (Facebook)

After the jury returned a verdict in a criminal trial in Sacramento County, a juror submitted a declaration stating that Juror Number One had "posted comments about the evidence as it was

being presented during the trial on his 'Facebook Wall,' inviting his 'friends' who have access to his 'Facebook' page to respond." The trial court conducted a hearing. Four jurors were examined, including Juror Number One and the reporting juror. The reporting juror testified that she did not learn about the Facebook postings until after the trial. Juror Number One had invited her to be a Facebook "friend," thus giving her access to his postings on Facebook, including those during the trial. She then saw the post mentioned in her declaration. According to the reporting juror, one person had responded to the post that he or she liked what Juror Number One had said.

Juror Number One admitted that he posted items on his Facebook account about the trial while it was in progress. However, he said those posts contained nothing about the case or the evidence but were merely indications that he was still on jury duty. Juror Number One acknowledged that on one occasion he posted that the case had been bored, and almost fell asleep. Juror Number One testified that he posted something every other day on his Facebook account and that he later tried to delete some of his posts. He denied reading any responses he received from his "friends" to these postings.

At the end of the hearing, the court concluded there had been "clear misconduct" by Juror Number One, but the degree of the misconduct was at issue. The trial court issued an order requiring Juror Number One to execute a consent form to release to the trial court for in camera review all items he posted during trial. Juror Number One sought a writ of prohibition seeking to bar the trial court from enforcing its order, but the Court of Appeal denied the writ. Among its reasons for doing so, the Court of Appeal disagreed with Juror Number One that the trial court had completed its investigation when it finished interviewing the questioned jurors. The Court of Appeal noted Juror Number One equivocated during the hearing as to how often and when he posted to Facebook during the trial, thus there was still some question about the content of the Facebook posts themselves. "It must be remembered that those posts are not just potential evidence of misconduct. They *are* the misconduct." (*Id*. at p. 867.) The Court of Appeal rejected Juror Number One's various theories of privacy in the Facebook posts, but said that even if Juror Number One has such a privacy interest, it is not absolute and must be balanced against the rights of the defendants to a fair trial. (*Id*. at p. 865.)

2. *People v. Tanubagijo* 2017 WL 526485 (communicating on Twitter)

After the jury was sworn, the judge admonished the jury not use the Internet to communicate or share information about the case, and specifically, "don't Twitter."

Following his conviction, the defendant moved for a new on the basis that the juror at issue communicated with non-jurors about the trial via Twitter, and the tweets demonstrated the juror's bias against the defendant.

The new trial motion attached 60 postings from the juror's Twitter account during the time period of the trial. Though most postings concerned "quotidian" matters, some tweets referred to his jury duty. The new trial motion focused on a tweet posted on the last day of the prosecution's case-in-chief, which said "In my book, everybody's guilty until proven innocent.

And by the looks of it, both of you n---a's are facing life."

The trial court conducted an evidentiary hearing, focusing on the above tweet. The court asked, "So when I read that, my first thought perhaps you were talking about some other case, because there was only one defendant in this case." The juror responded, "Correct." The juror said; "It's a subliminal message to my significant other, at the time, of a friend of mine." The court then asked a series of questions about whether the juror kept an open mind in the case, deliberated with the other 11 jurors and decided the case on the evidence. The juror answered yes to all these questions. At the conclusion of the hearing, the trial court concluded that the juror violated the court's order not to tweet about the case, but the juror did not talk about the facts of the case with non-jurors. The court emphasized that the only potentially prejudicial tweet was the final one, but noted the juror was talking about two people, which the court said supported the juror's representation that the tweet was not about the defendant. The court denied the new trial motion.

The Court of Appeal stated: "The juror committed misconduct by violating the court's instructions not to share information about the case on social media. But we reject the defendant's claim that the misconduct was prejudicial. Based on the juror's explanation, the court determined the tweet had no relation to the issues in the case and did not impair the juror's duty to serve impartially. We accept the court's findings and defer to its implicit determination that the juror was credible when he explained the tweet and his deliberations." The Court of Appeal agreed that the juror's misconduct was not prejudicial.