

2014

People v. Weatherton; 328 P.3d 38 (Cal. 2014)

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Recommended Citation

People v. Weatherton; 328 P.3d 38 (Cal. 2014), 42 W. St. U. L. Rev. (2015).

Available at: <http://lawscl.org/wslawreview/vol42/iss3/3>

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People v. Weatherton

328 P.3d 38 (Cal. 2014)

Opinion by Corrigan, J. with Cantil-Sakauye, C.J, Baxter, Werdegar, Chin, Liu, JJ. concurring

OVERARCHING ISSUE

Whether a juror's misconduct during the guilt phase of a criminal trial necessitates a new trial even if an unbiased jury would have reached the same verdict.¹

STATEMENT OF FACTS

On Halloween in 1998, Defendant, Ernest Hunt, ("Defendant") Nelva Bell, Connie Olivolo, Samuel Ortiz, Latonya Robertson, and Robertson's one-year-old son were together at a home in Indio while the adults shared crack cocaine.² After the drugs had been consumed, Bell, Robertson, and Robertson's son went to Ortiz's home to spend the night while Defendant went to a drug dealer to get more drugs on credit.³

The next morning, Bell woke up hearing Defendant outside claiming that Hunt was dead.⁴ Ortiz initially opened the door but then tried to close it at Bell's advice.⁵ Defendant then kicked open the door and entered the home carrying a long black gun, demanding " 'Where the money at?' " ⁶ When Robertson replied she did not have any money "Defendant replied 'Bitch, I ain't playing with you,' and shot her in the forehead."⁷ After Ortiz told Defendant where to find Ortiz's wallet, Defendant retrieved the money then shot Ortiz in the head.⁸

Defendant then heard Robertson moaning and proceeded to shoot her in the throat.⁹ During this time Bell was holding Robertson's one-year-old son and begging to not be shot, claiming that she " 'won't tell nobody.' " ¹⁰ Defendant told Bell to put down the child, shot Bell in the back, then stood over Bell and shot her in the face.¹¹ Because Bell had covered her face with her hand, the bullet went through her wrist and entered her mouth where it split her tongue and struck her teeth.¹² Bell then " 'played dead' " while Defendant kicked her several times prior to leaving.¹³

1. People v. Weatherton, 328 P.3d 38 (Cal. 2014).

2. *Id.* at 39.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Weatherton*, 328 P.3d 38 at 39.

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.* at 39-40.

12. *Id.* at 40.

13. *Weatherton*, 328 P.3d 38 at 40.

Later that morning Bell told both a neighbor and police that Defendant shot everyone so he could rob them.¹⁴ Police later located and arrested Defendant at Hunt's home.¹⁵ Ortiz died at the scene and Robertson was pronounced dead at the hospital.¹⁶ Defendant was convicted of murder and sentenced to death.¹⁷

Three days after the verdict, an anonymous caller told the trial court that a male juror had been overheard saying " 'this guy should be getting the death penalty, because that's what he wants.' "¹⁸ Given that there were only three men on the jury, Juror No. 1 (P.P), Juror No. 5 (M.K.), and Alternate Juror No. 5 (G.S), the prosecutor and defense agreed to have the court question the three jurors.¹⁹ Approximately a week later the prosecutor reported that Juror No. 3 (D.A.) had approached an attorney not involved with this case asked to discuss whether Defendant had received a fair trial; the attorney refused and reported the incident.²⁰ Upon questioning by the court, D.A. alleged that P.P. and M.K. discussed the penalty while still in the guilt phase of deliberations.²¹ The court then questioned the rest of the jurors, including P.P. and M.K., all of whom denied any misconduct.²²

Alternate Juror No. 1 (K.G.), however, stated she heard P.P. and M.K. discuss punishment on multiple occasions.²³ K.G. further testified that P.P. called her and other alternate jurors at home during deliberations to say Defendant was guilty.²⁴ At a subsequent hearing, Alternate Juror No. 4 (L.B.) stated there were multiple times prior to deliberations that P.P told her that he believed Defendant was guilty and was going to vote guilty.²⁵ She further testified that it appeared that P.P. had his mind already made up.²⁶ Upon questioning by the trial court, however, P.P. denied prejudging the case and said he kept an open mind during deliberations.²⁷ At the end of the hearing the court excused P.P., D.A., K.G., and L.B. .²⁸ When Defendant moved for a mistrial based on jury misconduct, the trial court refused since it had "already recorded the guilty verdict."²⁹

The next day, Defendant filed a written motion for new trial and mistrial alleging, based on declarations of four of the jurors, that P.P. had prejudged the case.³⁰ After argument by both sides the court took the motion under submission until the penalty phase so the jurors could be interviewed in an effort to determine if P.P. had

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Weatherton*, 328 P.3d 38 at 40.

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.* at 40-41.

24. *Id.* at 41.

25. *Weatherton*, 328 P.3d 38 at 41.

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

affected the other juror's deliberations.³¹ The penalty phase resulted in a death verdict, and Defendant's motion for a new trial began a week later.³²

When called to testify, numerous jurors admitted to either outright misconduct or to hearing P.P. repeatedly state from the beginning of trial that he would be voting guilty.³³ P.P. eventually admitted to discussing the case outside of deliberations but still said he participated in deliberations.³⁴ The trial court found that while P.P. committed " 'serious misconduct'. . . it did 'not rise to the level that there is a substantial likelihood [of bias]' " and denied the motion for a new trial.³⁵

ANALYSIS

The court explained that criminal defendants have constitutional rights to a trial by unbiased, impartial jurors and a conviction cannot stand if even one juror was improperly influenced.³⁶ Furthermore, any form of prejudgment raises a "presumption of prejudice" that can only be rebutted " 'if the entire record . . . indicates there is no reasonable probability of prejudice.' " ³⁷ Upon review, whether or not jury misconduct is considered prejudicial is a mixed question of law and fact that is subject to independent determination by appellate courts.³⁸

The court explained that based on the entire record here, it was unable to eliminate a reasonable probability of prejudice.³⁹ Undisputed evidence established that not only did P.P. repeatedly discuss the case outside of deliberations but also that he continually stated his belief that Defendant was guilty and deserved the death penalty.⁴⁰ The court explained that by his actions P.P. abandoned any claim to being an impartial juror and instead became an advocate of Defendant's guilt, telling other jurors why Defendant was guilty prior to deliberations even beginning.⁴¹ That P.P.'s phone calls to the other jurors at home represented an effort to persuade the other jurors to vote guilty.⁴²

While the trial court properly found that P.P. had engaged in serious misconduct based on these actions, it then failed to apply the presumption of prejudice before denying Defendant's motion for a new trial.⁴³ Despite the court's expressed belief that an unbiased jury would have reached the same verdict, it explained that "it

31. *Weatherton*, 328 P.3d 38 at 42.

32. *Id.*

33. *Id.* at 43.

34. *Id.* at 43.

35. *Id.* at 44.

36. *Weatherton*, 328 P.3d 38 at 44 (citing *People v. Nesler*, 941 P.2d 87 (Cal. 1997); *People v. Holloway*, 790 P.2d 1327 (Cal. 1990)).

37. *Id.* (quoting *In re Hamilton*, 20 Cal. 4th 273 (1999)).

38. *Id.* (citing *People v. Tafoya*, 164 P.3d 590 (Cal. 2007)).

39. *Id.* at 44-45.

40. *Id.* at 45.

41. *Id.*

42. *Weatherton*, 328 P.3d 38 at 45.

43. *Id.*

is for the prosecutor to rebut the presumption.”⁴⁴ Given the pervasive nature of P.P.’s misconduct and the prosecution’s failure to properly rebut the presumption of prejudice, the court reversed the trial court’s judgment.⁴⁵

LEGAL SIGNIFICANCE

This case represents an important lesson: holding criminal prosecutors to their burdens and protecting a criminal defendant’s rights are necessary notwithstanding the weight of the evidence presented. In its decision the court recognized that an unbiased jury would rule the same way irrespective of prejudice to Defendant. To hold otherwise would create a slippery slope towards courts justifying infringing on constitutional rights for judicial economy. By reversing the conviction here, the court reinforced criminal defendant’s constitutional rights, and strengthened confidence in the justice system. While it may seem unfair to the family of the victims here that the Defendant’s conviction was reversed, it was necessary to protect the integrity of our justice system and served as a reminder to trial courts that prosecutorial burdens are in place for a reason and that it is necessary to holding prosecutors to them in order to maintain confidence in the criminal justice system.⁴⁶

44. *Id.* at 46 (citing *In re Hamilton*, 20 Cal. 4th 273, 296).

45. *Id.*

46. The author of this summary, Seth DuMouchel, is a Juris Doctor candidate, May 2015, at Western State College of Law.