

Serial: 154532

IN THE SUPREME COURT OF MISSISSIPPI

No. 89-R-99002-SCT

IN RE: MISSISSIPPI RULES OF EVIDENCE

ORDER

This matter is before the Court en banc on the Motion to Amend Certain Rules of the Mississippi Rules of Evidence filed by the Supreme Court Advisory Committee on Rules. Having considered the matter, the Court finds that the amendment of Rule 606 and the Comment as set forth in Exhibit “A” hereto will promote the fair and efficient administration of justice.

IT IS THEREFORE ORDERED that the petition is hereby granted to the extent that Rule 606 and its Comment of the Mississippi Rules of Evidence are amended as set forth in Exhibit “A” hereto. This amendment is effective on July 1, 2009.

IT IS FURTHER ORDERED that the Clerk of this Court shall spread this order upon the minutes of the Court and shall forward a true certified copy to West Publishing Company for publication as soon as practical in the advance sheets of *Southern Reporter, Third Series (Mississippi Edition)* and in the next edition of *Mississippi Rules of Court*.

SO ORDERED, this the 20th day of April, 2009.

/s/ George C. Carlson, Jr.

GEORGE C. CARLSON, JR., PRESIDING JUSTICE
FOR THE COURT

TO GRANT: ALL JUSTICES.

Exhibit A

Rule 606. Competency of Juror as Witness

(a) At the Trial. A member of the jury may not testify as a witness before that jury in the trial of the case in which ~~he~~ the juror is sitting ~~as a juror~~. If ~~he~~ the juror is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

(b) Inquiry into validity of verdict or indictment. 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 ~~that his~~ or any other juror's mind or emotions as influencing ~~him~~ to assent to or dissent from the verdict or indictment or concerning ~~the juror's~~ 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~~ a juror's affidavit or evidence of any statement by ~~the juror~~ him concerning a matter about which ~~the juror~~ he would be precluded from testifying be received for these purposes.

[Amended effective July 1, 2009]

Comment

Rule 606(a) disqualifies a juror from taking the witness stand during the trial of the case in which the juror is sitting. Of course, calling a juror as a witness will be rare; voir dire will generally expose a juror's knowledge of facts relevant to a case and result in disqualification of the juror for cause.

Rule 606(b) is designed to protect all "components of [a jury's] deliberations, including arguments, statements, discussions, mental and emotional reactions, votes and any other feature of the process." See FRE 606, Advisory Committee Notes. Thus testimony or affidavits of jurors is incompetent to show a compromise verdict, a quotient verdict, misinterpretation of instructions, and the like. See, e.g., *Hayes v. Entergy Mississippi, Inc.*, 871 So. 2d 743 (Miss. 2004) (pressure to reach a verdict); *Busick v. St. John*, 856 So. 2d 304 (Miss. 2003) (misinterpretation of instructions); *APAC-Mississippi, Inc. v. Goodman*, 803 So. 2d 1177 (Miss. 2002) (quotient verdict); *Curtis v. Bellwood Farms, Inc.*, 805

So. 2d 541 (Miss. Ct. App. 2000) (improper consideration of attorney's statements despite court's cautionary instruction); *Gavin v. State*, 767 So. 2d 1072 (Miss. Ct. App. 2000) (confusion regarding instructions); *Galloway v. State*, 735 So. 2d 1117 (Miss. Ct. App. 1999) (improper consideration of defendant's prior conviction). This broad rule of exclusion ensures jurors "freedom of deliberation, stability and finality of verdicts, and protection of jurors against annoyance and embarrassment." See FRE 606, Advisory Committee Notes.

Rule 606(b) does not purport to set forth the substantive grounds for setting aside verdicts because of an irregularity. Even when grounds are alleged to exist, there is a "general reluctance after verdict to haul in and probe jurors for potential instances of bias, misconduct or extraneous influences." *Gladney v. Clarksdale Beverage Co., Inc.*, 625 So. 2d 407, 418 (Miss. 1993) (discussing substantive grounds for setting aside a verdict). At the least, a party needs to show "a specific, non-speculative impropriety has occurred," and the trial court must supervise any post-trial investigation to "ensure that jurors are protected from harassment and to guard against inquiry into subjects beyond which a juror is competent to testify." *Id.* at 419. When jurors are permitted to testify about objective facts not of record and about outside influences, they may not be questioned about the effect upon them of what was improperly brought to their attention. *Id.*

In narrowly prescribed circumstances, Mississippi permits the correction of clerical errors in the verdict, notwithstanding Rule 606(b). See *Martin v. State*, 732 So. 2d 847, 851-855 (Miss. 1998) (Verdict incorrectly stated the defendant was guilty of possession of morphine when in fact the jury unanimously found the defendant not guilty. Such an allegation of clerical error did "not challenge the "validity" of the verdict or the deliberation or mental process of the jurors.") Of course, the possibility of clerical errors in the verdict form will be reduced substantially by polling the jury. Errors that come to light after polling the jury "may be corrected on the spot, or the jury may be sent out to continue deliberations, or, if necessary, a new trial may be ordered." C. Mueller & L. Kirkpatrick, *Evidence Under the Rules* at 671 (2d ed. 1999) (citing *Sincov v. United States*, 571 F.2d 876, 878-79 (5th Cir. 1978)).

[Comment adopted effective July 1, 2009]