

FILED  
AT 4 O'CLOCK P.M.

JUN - 8 2015

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LANE COUNTY

Circuit Court For Lane County, Oregon  
BY Kee

THE STATE OF OREGON,

Plaintiff,

Case No. 20-12-16842

vs.

SC S062310

DAVID RAY TAYLOR,

Defendant.

REMAND INVESTIGATION AND  
FINDINGS

**SUMMARY**

I have completed my investigation pursuant to the Oregon Supreme Court's January 7, 2015 Order of Remand. With regard to the issue of juror misconduct, there is evidence that Ms. Holly Moser may have misrepresented her knowledge of the facts of the case and her feelings about the appropriate penalty. There is no evidence, however, that Ms. Moser shared that knowledge or those feelings with the jurors empaneled in the case. Moreover, there is no evidence that Ms. Moser did anything to influence the jury's decisions during either the guilt/innocence phase or the sentencing phase of the trial.

**PROCEDURAL BACKGROUND**

In late September of 2014, it came to my attention that one of the alternate jurors, Ms. Holly Moser, who had been employed as a Criminal Data Entry Clerk at Lane County Circuit Court, may have reviewed one or more of the search warrant affidavits in this case and may have formed strong opinions about the outcome of the case prior to trial. This information appeared inconsistent with the testimony of that alternate juror during voir dire.

Soon thereafter, I wrote to the jurors in this case informing them that a matter had come to my attention that may necessitate their returning to court. I also had the jurors served with an order instructing them not to discuss the case with anyone, to avoid any media coverage regarding the case, and to keep the court informed of their whereabouts.

On October 13, 2014, I wrote to the parties to alert them of the situation and informed them of my contact with the jurors. I invited the parties to make suggestions for how to proceed. I attached to that letter a copy of an email message written by Ms. Moser that had been the cause of my concern, a transcript of the alternate juror's testimony during voir dire, a copy of my letter to the jurors, and a copy of the order served on all jurors.

In response to my letter, appellate counsel for Mr. Taylor wrote to me indicating that they would seek an order of remand from the Oregon Supreme Court to allow this Court to investigate the possible juror misconduct. Thereafter, defense counsel filed such a motion with the Supreme

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Court. The defense's motion and the State's response thereto sought remand to this Court to conduct an investigation and requested that the Supreme Court set certain procedures for how this Court was to conduct the investigation.

On January 7, 2015, the Supreme Court issued an order remanding the case to this Court for the limited purpose of investigating whether Ms. Moser engaged in juror misconduct and, if she did, whether her misconduct tainted the other jurors' consideration of the case. In that order, the Supreme Court declined the invitation of the parties to put any further limits on how this Court was to conduct the matter on remand and instead left the method of investigation to the sound discretion of this Court.

## INVESTIGATION

### A. Procedure

On January 20, 2015, I wrote to the parties outlining my initial thoughts as to how to conduct the investigation and inviting them to make suggestions for the procedure. I also set a hearing to discuss the procedure and scheduling matters for future hearings in this matter. *See* Exhibit R-2.

On January 30, 2015, I sent the parties a list of proposed questions I intended to ask the jurors as part of my investigation and invited the parties to suggest additional questions and to comment on my proposed questions. A copy of that correspondence has been added to the record as Court Exhibit R-3.

On February 9, 2015, the parties appeared before this Court for a hearing to discuss how to proceed. At that hearing, we discussed a number of issues, including whom to question, what questions to ask, and how the questioning was to be conducted.

On February 12, 2015, after considering the input of the parties, I announced how this Court would proceed in a letter to counsel. *See* Exhibit R-5.

On March 6, 2015, I questioned all of the jurors and alternate jurors except Ms. Moser. Each of those jurors and alternate jurors was asked the same ten questions. A copy of those questions has been made part of the record as Exhibit R-7. Each juror and alternate juror was questioned individually on the record. Counsel was afforded the opportunity to suggest follow-up questions but made no suggestions.

Prior to the start of my questioning on March 6, 2015, I made part of the record an affidavit signed by Ms. Moser's supervisor, Ms. Kathrine Grant, Lane County Circuit Court Operations Manager. *See* Exhibit R-8. Ms. Grant's affidavit spelled out the procedure used by Lane County Circuit Court to process applications for search warrants, the warrants themselves, and the returns thereon.

Following my questioning of the jurors and alternate jurors, this Court heard argument from counsel about whether to question Ms. Moser. The State indicated that it no longer felt that Ms. Moser needed to be questioned. The defense maintained that Ms. Moser should be questioned. I took the matter under advisement.

On April 3, 2015, I wrote to counsel indicating that in light of the responses this Court received from the jurors on March 6, 2015, I did not believe it was necessary to question Ms. Moser. I also invited the parties to suggest how to proceed. That correspondence is attached as Attachment 1. Counsel for both sides agreed that I should prepare and file with the Oregon

Supreme Court a report of my investigation. They disagreed about whether I should or could consider any other motions.

## **B. Record**

The following proceedings were recorded:

February 9, 2015 – Hearing to discuss whom to question, what questions to ask, and how the questioning was to be conducted; and

March 6, 2015 – Jurors questioned on the record.

## **C. Findings**

At the time of trial, Ms. Moser was employed as a Criminal Data Entry Clerk at Lane County Circuit Court.

Ms. Moser was summoned to potentially serve as a juror in this matter. She was questioned during voir dire in this matter on Tuesday, April 15, 2014. An excerpt of her voir dire is attached as Attachment 2. During voir dire, Ms. Moser denied knowing anything about this case beyond recognizing the name of the defendant. Ms. Moser also denied having formed any opinions about the case or what the outcome of the case should be.

Ms. Moser was ultimately selected to serve as an alternate juror in this case. She did not participate in deliberations during either the guilt/innocence or sentencing phases of this case.

Including Ms. Moser, there were four alternate jurors seated in this case (Moser, Ranch, Graves, Kirchner). None of the alternate jurors participated in deliberations during either the guilt/innocence or sentencing phases of the case.

On February 14, 2014, two months prior to her voir dire, Ms. Moser sent her husband an email message that appears to relate to this case. A copy of that email message is attached as Attachment 3. Although the email refers to a summons for the murder trial for Gillette, the defendant in another murder case set for trial at Lane County Circuit Court at around the same time, the facts of the case and the defendant's history referenced in Ms. Moser's email are clearly those of this case. In the email she says, among other things, "He needs to die. There is no way I would get on that jury . . . after reading the search warrants."

Ms. Moser's answers during voir dire are inconsistent with the statements made in her email. In particular, in Ms. Moser's email, her recitation of details related to this case and her statement that she read the search warrants is inconsistent with her voir dire testimony that she really had no idea which case this was and that all she knew about the case was the defendant's name. Likewise, Ms. Moser's statement in the email that she believed the defendant should die is directly inconsistent with her voir dire testimony that she had not formed any opinions about the case or about what the outcome of the case should be.

Ms. Moser's testimony during voir dire does offer a possible explanation for why she told the lawyers that she really knew nothing about the case despite her email: During questioning, Ms. Moser explained that she does data entry on so many cases that after more than a week, "they kind of go away." I do not, however, find this explanation particularly credible given that she had been subpoenaed to be a juror in this case at the time she wrote her February 14, 2014 email and, thus, this matter was no longer just another case for Ms. Moser.

In her email, Ms. Moser said that she had learned the details of the case from “reading the search warrants.” I have reviewed the search warrants in this case and, like most search warrants, they provide very little information about the case and certainly do not contain the details referred to in her email. Thus, I conclude that she was actually referring to search warrant affidavits.

Based on Ms. Grant’s affidavit, the only search warrant affidavit that Ms. Moser would have had access to was the one dated January 23, 2013, a copy of which is attached to Ms. Grant’s affidavit. That affidavit was made public and many of the facts contained therein were contained in news stories prior to the trial.

Not one of the jurors questioned by the court remembered Ms. Moser ever disclosing to them facts that were not in the record. Of the twelve jurors who participated in the deliberations during both phases of the case, seven (Osterman, Anderson, Brandt, McCann, Archuleta, Crawford, and English) affirmatively stated that Ms. Moser had never discussed with them any facts relating to the case or to Mr. Taylor. The testimony of the remaining five jurors is examined individually below.

MS. MARJAMA: Ms. Marjama testified in a manner that supports the conclusion that Ms. Moser never disclosed any information to her. Ms. Marjama testified that she didn’t really recognize Ms. Moser from her photograph but thought she remembered somebody saying they worked for the Court. When asked if Ms. Moser had ever mentioned allegations that Mr. Taylor may have been involved in a home invasion robbery in Lake Oswego (Q2), her answer was, “Umm. I don’t remember.” When asked to clarify what she meant, Ms. Marjama responded, “I don’t remember ever talking about that.” When asked, “Is that something that you would remember if it had come up?” Ms. Marjama stated, “I have no idea.” Similarly, when asked if Ms. Moser had ever mentioned to her allegations that Mr. Taylor may have been involved in bank robberies other than the Creswell bank robbery on June 8, 2012 and the Mapleton Bank robbery on August 3, 2012 (Q3), Ms. Marjama stated that she did not remember. When the Court asked for Ms. Marjama to clarify her answer, she stated, “I don’t remember at all.” When asked if Ms. Moser had ever mentioned to her any alleged confession by A.J. Nelson (Q7), Ms. Marjama testified, “Not that I remember.” When asked if it is something that she would have remembered, she responded, “Again, I just don’t remember in general.” Ms. Marjama answered “no” to all other questions, including the two general questions the court put to the jurors: Specifically, (Q8) Did Ms. Moser tell you anything else about Mr. Taylor or the crimes with which Mr. Taylor was charged that you did not hear about in court? and, (Q9) Did Ms. Moser ever mention to you any crimes allegedly committed by Mr. Taylor other than the ones you heard about in the courtroom? From this, I conclude that Ms. Marjama does not have a memory of any specific conversations with Ms. Moser but that Ms. Marjama does remember that she did not hear any information about Mr. Taylor or the crimes with which he was charged other than what she learned in the courtroom.

MR. PALMER: Mr. Palmer testified in a manner that supports the conclusion that Ms. Moser never disclosed any information to him. When asked if Ms. Moser had ever mentioned allegations that Mr. Taylor may have been involved in a home invasion robbery in Lake Oswego (Q2), he answered, “Not that I remember her saying anything like that.” When asked if that was something he would remember if Ms. Moser had told him, Mr. Palmer answered, “I would think so, yes.” Similarly, the following dialogue followed when Mr. Palmer was asked if Ms. Moser

had ever mentioned to him allegations that Mr. Taylor may have been involved in bank robberies other than the Creswell bank robbery on June 8, 2012 or the Mapleton bank robbery on August 3, 2012 (Q3):

PALMER: I don't remember her saying anything during that time. A lot of times when I'm in the jury room and I'm hard of hearing so I would take my hearing aids out and didn't communicate a lot in that room because of that fact.

COURT: Ok, but that thing that . . . all I'm asking you about is whether you remember that, and it sounds like you don't remember her ever saying that to you.

PALMER: No, I don't remember that.

COURT: And to be clear, is that something that you would remember if she had said that?

PALMER: I would think I would remember her saying something about that, but if I . . . but it doesn't come to my mind right now that I heard her say anything like that.<sup>1</sup>

When asked if Ms. Moser ever mentioned to him that Mr. Taylor may have been involved in acts of violence other than those which the jury heard evidence of during the trial, Mr. Palmer stated that he did not "remember her saying anything about that, no." When asked if that was something he would have remembered, Mr. Palmer said, "I would think pretty pertinent information that I would've remembered." Mr. Palmer answered "no" to all other questions put to him by the Court. I conclude from Mr. Palmer's answers that Ms. Moser did not disclose any information to him.

MS. JENSON: Ms. Jenson testified in a manner that supports the conclusion that Ms. Moser never disclosed any information to her. Ms. Jenson answered "no" to all but two of the questions put to her by the Court. When asked if Ms. Moser ever mentioned to him that Mr. Taylor may have been involved in acts of violence other than those which the jury heard evidence of during the trial, Ms. Jenson stated, "I don't think so." When asked a follow-up question by the Court, Ms. Jenson responded that they "didn't discuss anything in the jury room." When asked if Ms. Moser told her anything else about Mr. Taylor or the crimes for which he was charged that she did not hear about in court, Ms. Jenson responded, "Not that I remember." When asked if that was something she would remember, she answered, "Yeah, I think so." I conclude from Ms. Jenson's answers that Ms. Moser did not disclose any information to her.

MS. HODGES: Ms. Hodges testified in a manner that supports the conclusion that Ms. Moser never disclosed any information to her. Ms. Hodges answered "no" to all but one of the questions put to her by the Court. When asked if Ms. Moser had ever mentioned to her

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<sup>1</sup> Please note that this is not an excerpt from the official record. Rather, a judicial clerk at Lane County Circuit Court transcribed this portion of the proceeding for the purpose of preparing these findings.

allegations that Mr. Taylor may have been involved in bank robberies other than the Creswell bank robbery on June 8, 2012 or the Mapleton bank robbery on August 3, 2012 (Q3), Ms. Hodges answered, "Not that I recall, no." When asked if that was something she would remember, she responded, "Probably." I conclude from Ms. Hodges' answers that Ms. Moser did not disclose any information to her.

MR. WEB: Mr. Web testified in a manner that supports the conclusion that Ms. Moser never disclosed any information to him. Mr. Web answered "no" to all but one of the questions put to him by the Court. When asked if Ms. Moser had ever mentioned allegations that Mr. Taylor may have been involved in a home invasion robbery in Lake Oswego (Q2), Mr. Web answered, "No, not that I recall." When asked if that was something he would remember, he said, "I think I would, yeah." I conclude from Mr. Web's answers that Ms. Moser did not disclose any information to him.

Thus, I conclude from reviewing the jurors' answers that there is no evidence that Ms. Moser ever disclosed any information that she may have gleaned from outside sources, including search warrants and search warrant affidavits.

Eleven of the twelve jurors who participated in deliberations denied that Ms. Moser ever told them what she thought should happen to Mr. Taylor. See responses to Question 10. One juror, Ms. Hodges, answered, "Not that I recall, no." When asked if that was something she would remember, she said, "Probably." I conclude from these statements that Ms. Moser did not share with the jurors her opinion that Mr. Taylor should die.

## CONCLUSION

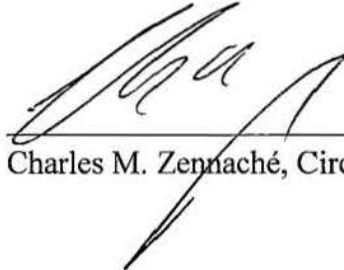
It is clear to me from my review of this situation that either Ms. Moser has a very bad memory or that she knew more about this case than she revealed during voir dire. Her February 14, 2014 email refers to details associated with the case (i.e., "two younger black kids from Portland," "killed a boy," "chopped him up in pieces," and "took his car to Florence to rob a bank"). It also refers to specific characteristics of Mr. Taylor (i.e., "out of prison for a couple of years for a murder in the 70's"). Likewise, it is clear that Ms. Moser did not accurately disclose the strength of her feelings about what punishment Mr. Taylor deserved during voir dire. According to her email, Ms. Moser believed that Mr. Taylor "needs to die." Had Ms. Moser been involved in the deliberations during either phase of this case, this lack of candor would give rise to significant concerns about the fairness of the trial. However, the fact is that Ms. Moser did not participate in the deliberations during either the guilt/innocence phase or the sentencing phase of the trial. Thus, the only way Ms. Moser's knowledge and feelings could implicate the fairness of the proceeding would be if she had shared those things with the jurors who did in fact participate in the deliberations.

There is no evidence to suggest that Ms. Moser ever disclosed her knowledge or feelings to the jurors who participated in the deliberations. Not one of the jurors who participated in the deliberations in this case indicated that Ms. Moser ever told them anything about the case, Mr. Taylor, or her feelings about what should happen to Mr. Taylor. Even if Ms. Marjama's answers are interpreted to mean she simply has no memory of what occurred in the jury room, there is nothing that would overcome the presumption that the jury followed the court's instructions,

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which included, among others, instructions to judge the case based solely on the evidence presented at trial, not to discuss the case prior to deliberations, not to share any special knowledge, and not to consider anything they hear or see outside of the courtroom as evidence.

DATED: June 8, 2015



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Charles M. Zennaché, Circuit Court Judge