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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. RYAN TAYLOR BRIGHT, Defendant and Appellant.	B264133 (Los Angeles County Super. Ct. No. SA081307)

APPEAL from a judgment of the Superior Court of Los Angeles County, James R. Dabney, Judge. Reversed and remanded.

Steven Schorr, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews, and Rama R. Maline, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Ryan Taylor Bright of second degree murder and found true the special allegation he had personally used a deadly or dangerous weapon in committing the offense. On appeal Bright contends the trial court erred in refusing to grant a mistrial, arguing there was a substantial likelihood a juror's misconduct during deliberations tainted the jury panel and the trial court failed to conduct the inquiry necessary to ensure the impartiality of the jury. We agree and reverse.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Information*

An information charged Bright with one count of murder (Pen. Code, § 189)[1] and specially alleged he had used a deadly or dangerous weapon in committing the offense. Bright pleaded not guilty and denied the special allegation.

2. *The Evidence at Trial*

a. *The People's evidence*

Bright and Jensen Gray were good friends. On the evening of July 11, 2012 Bright, Gray, Bright's girlfriend Aishlinn Jaffe, and Jaffe's friend, then-17-year-old Gabrielle Fry, socialized and drank rum together in Bright's Santa Monica apartment. According to Fry, Bright became more and more agitated as the evening progressed. After several hours of drinking, Bright and Gray argued; and their dispute escalated to a physical fight. No weapons were used. Bright initiated the attack; Gray defended himself. Part of the fight, which took place in the hallway, was captured on surveillance video that was played for the jury.

About midnight, Fry, Gray and Jaffe left the apartment to separate themselves from Bright. When they returned a short time later, Bright was not there. Jaffe passed out in the bedroom. At 1:00 a.m. police responded to a neighbor's noise complaint at the apartment. By that time Bright had returned. The police officers conducted a pat search of Bright and found no weapons. They noticed Bright was intoxicated. Police officers asked Gray

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1 Statutory references are to this code unless otherwise stated.

and Fry if they felt safe staying together with Bright. They responded they did. The police officers left. Bright also left the apartment.

At 3:00 a.m. Bright scaled the six-foot wall separating his patio from the alley and tried to enter the sliding glass door to his apartment. Fry, afraid of Bright and believing the apartment belonged to Jaffe, not Bright, tried to stop him from entering. Bright opened the door and grabbed Fry by the neck with enough force to lift her off her feet and leave his handprint on her neck. Fry screamed for help, and Gray ran to assist her. Bright grabbed Gray in a headlock, and they both fell to the ground. Gray shouted to Bright, "Stop it." "Don't do this." "Stop fighting with me." Fry noticed Bright had an open pocket knife in his hand. She kicked Bright, causing the knife to fall to the floor. She and Bright simultaneously reached for the knife. Fry grabbed the blade side of the knife, and Bright the handle, tearing it away from Fry and cutting Fry's palm. Bright then stabbed Gray six times, inflicting several wounds, including one to the heart that was fatal. Gray did not have any weapon. Bright ran out of the apartment.

Bright discarded the knife, which was found later that morning under a person sleeping in the breezeway of the apartment complex. When police detained Bright on the street several minutes after the killing, he told them, Gray "thinks he's a fucking tough guy." "He beat the shit out of me. What else am I supposed to do?" "Bring him over here and he will tell you."

b. *The defense*

Bright testified in his own defense and disputed Fry's account of the fatal attack. According to Bright, Gray and Fry were the aggressors. Bright simply wanted to return to his own apartment. He did not scale the patio wall; he entered through the front door. Gray and Fry then attacked him and tried to push him out. He defended himself. He did not grab Fry by the throat. Gray tackled him. While Bright was on his hands and knees, Gray choked him; and Fry kicked him. He saw his knife on a nearby table and reached for it. Gray had said he wanted to kill him. Bright feared for his life and stabbed Gray in self-defense. Bright did not remember discarding his bloody shirt, which was found on the ground in a local construction site, or the knife. He did not hide the knife under a sleeping homeless person.

Bright also introduced evidence that Gray was an alcoholic with a history of domestic violence. In addition, Bright's expert witness testified that, based on Bright's blood alcohol level at the time of his arrest, Bright's estimated blood alcohol level at the time of the second fight was likely to have been .30, an "exceedingly high" level. According to the expert, that amount of alcohol, alone or combined with Bright's prescribed dose of .5 to 1 milligram of Xanax, which was also found in his blood at the time of his arrest, would lead a person to act impulsively without thinking of the consequences.

3. *The Parties' Theories of the Case*

The People's theory at trial was that Bright, upset about the first fight that evening, returned armed with a knife intending to commit a murder. At the very least, the prosecutor argued, Bright's violent conduct, committed with express or implied malice, amounted to second degree murder.

The defense theory was that Gray had been the aggressor; Bright acted in self-defense and thus had committed no crime. At most, the defense argued, Bright was guilty of voluntary manslaughter under an imperfect self-defense theory—he entertained a good faith but unreasonable belief he needed to use deadly force to protect himself. Defense counsel also argued Bright's voluntary intoxication had rendered him unconscious of his actions, negating malice and rendering him guilty of the lesser included offense of involuntary manslaughter.

The jury was instructed on the elements of first degree premeditated murder; second degree murder; voluntary manslaughter based on heat-of-passion or sudden quarrel; voluntary manslaughter based on imperfect self-defense; the effect of voluntary intoxication on premeditation, deliberation and intent to kill; voluntary intoxication rendering a person unconscious of his actions and reducing killing to involuntary manslaughter; and justifiable homicide based on self-defense.

4. *Two Instances of Juror Misconduct and Bright's Request for Mistrial*

a. *Juror 10's conversation with a witness*

During trial defense counsel informed the court he saw juror 10 speak with Officer Bryan Hayes, who had been called as a witness for the prosecution. (Officer Hayes arrested Bright at 3:00 a.m., just after Gray was killed, and testified Bright did not appear intoxicated at the time of his

arrest.) The court promptly questioned juror 10 about his conversation with Hayes. Juror 10 stated Hayes had used the term "breezeway" in his testimony and juror 10 knew that term was commonly used in the United States Marine Corps. Juror 10 told the court he simply asked Officer Hayes what unit in the Marines he had served in and the years he served. Juror 10 assured the court he did not discuss the case. The court emphatically reminded juror 10 that he was not to speak to the parties, witnesses or anyone involved in the case and asked juror 10 whether anything had transpired in the conversation that would affect juror 10's ability to evaluate Officer Hayes's testimony or judge his credibility. Juror 10 said no. The court found juror 10 credible and denied defense counsel's request to remove him, stating, "I do find him credible as to the nature of the scope of the conversation with Officer Hayes. Juror No. 10 has a somewhat military bearing. I . . . am not surprised that he has that Marine Corps background as well. But I don't think anything was stated related to the case. And it was already clear from the testimony that Mr. Hayes, Officer Hayes, . . . was a former Marine because I think he said that in his testimony." The court told defense counsel it would review the case law to determine whether the conversation, without more, was misconduct and invited defense counsel to provide additional case law if it found any.

b. *Juror 10's consideration of outside sources*

On the morning of the jury's second day of deliberations, the foreperson sent a note that the panel was "hung," eight to four, concerning the "degree." After a lunch recess juror 4 also informed the court that juror 10 had looked up information in the Penal Code the previous evening and shared it with the other members of the panel. The court questioned juror 4:

Court:	"You sent communication to me . . . indicating that one juror looked up the Penal Code last night."
Juror 4:	"He said he did and I felt like that was something I should tell you.
Court:	"Who said it? Which juror?"
Juror 4:	"Juror no. 10, I believe.
Court:	"And did he say what he looked up?"
Juror 4:	"No. I think in your instructions to the jury, . . .

they're very dense. There's a lot to consider."

Court: "Correct."

Juror 4 "So I think that he was probably continuing to mull over the things that had been discussed.

Court: "But he didn't discuss what he saw on—about—other than he looked up the Penal Code? Did he say what Penal Code? Did he say what he looked up?

Juror 4: "He didn't say. But he was–

Court: "All I want to know is did he say, 'I looked up the Penal Code?' Did he share with the rest of the jurors what it is he found in the Penal Code?"

Juror 4: "He didn't say specifically. He did say in general. If you look at the different things we were considering, he didn't say how it affected where he—he did say that—it did sound like after reading the Penal Code that his view was broader of what might be encompassed than it had been before."

Court: "But he didn't share what was in the Penal Code that gave him that impression?"

Juror 4: "Not in any specifics, no."

Court: "That was juror no. 10?"

Juror 4: "I believe it was No. 10."

The court stated, "I've heard enough and I've had enough." The court called in juror 10, who admitted he had disregarded the court's instructions not to do any research or consult outside source material. Juror 10 stated he had looked up murder and manslaughter in the Penal Code to get a better understanding of the issues. The court asked whether he shared any "specifics" or "details" he learned with any other members of the jury. Juror 10 said he had not. The court excused juror 10 and then conducted an inquiry of the rest of the jurors:

Court: "I've had to excuse juror no. 10. He did not follow the court's instructions about doing research on his own. . . . So what I need to know is this: Did he share with any of you, because he indicated—he did

acknowledge looking up the Penal Code. Did he share with you what he learned from the Penal Code? Did he cite any code sections, any language, any of that to any of you? I see no hands. You hesitated, juror no. 11."

Juror 11: "I don't think he said anything really specific. I think just some generalities."

Court: "Were they different than the instructions that were given by the court?"

Juror 4: "I guess it was more talking about sentencing, I think."

Court: "Did he discuss what the sentences were for the various different crimes?"

Juror 11: "No, no, no."

Court: "He just indicated there were differences in sentences?"

Juror 4: "Yes."

Court: "He didn't tell you what?"

Juror 4: "He sort of expressed his opinion about what might [be]within [the] scope based on what he read, but not in any—no detail, no specifics, no codes."

Court: "Right. You understand that in this case you cannot consider punishment. You're here to decide the facts. Period. Apply those to the law. I do the sentencing. Everybody understand that?"

"(The jurors respond 'yes.')"

Court: "Anything else that he said relating to this?"

Juror 11: "No."

Court: "You're indicating nobody heard anything about anything specific? Is that correct or incorrect?"

"(The jurors respond 'correct.')"

Court: "Is there anything that he said during the course of the discussions that swayed any of you in terms of how you were thinking and the terms of your

deliberations?"

"(The jurors respond 'No.')"

Juror 11: "Definitely not."

Court: "Anything about what he said would have any impact on your ability to follow my instructions and my instructions alone?"

"(The jurors respond 'No.')"

Juror 11: "Definitely not."

After the jury was excused to return to the jury room, defense counsel moved for a mistrial on the ground the entire jury panel had been tainted: "Whether it's a specific or general conversation about the law, I think just in any way introducing that into the panel is extremely prejudicial. But now we're hearing it might have also encompassed sentencing issues. Some of these jurors might think that a manslaughter sentence is too lenient. I am very concerned on behalf of my client. We're making a motion for a mistrial as to the matter."

The court denied the motion for mistrial, stating, based on its inquiry of the jury panel, it did not believe anything had been shared with the jurors that would preclude them from following the instructions given. The court swore in an alternate juror to replace juror 10 and instructed the reconstituted jury to begin deliberations anew.

At the end of the second day of deliberations, a Friday afternoon the week before Christmas, two jurors expressed concern that they would have conflicts if deliberations continued into the next week. The court asked the jury to return on Monday for one more day and said it would reassess the situation at that time. On Monday afternoon the jury reached its verdict.

5. *The Verdict, Denial of New Trial Motion and Sentence*

The jury found Bright not guilty of first degree murder and convicted him of second degree murder. It also found true he had used a deadly or dangerous weapon in committing the offense. The court denied Bright's motion for new trial based, in part, on juror misconduct and its effect on the jury panel and sentenced Bright to a state prison term of 16 years to life.

DISCUSSION

1. *Governing Law*

A juror commits misconduct when he or she considers information about a party or about the case that was not part of the evidence received at trial. (*People v. Dykes* (2009) 46 Cal.4th 731, 809; *People v. San Nicolas* (2004) 34 Cal.4th 614, 650; *People v. Tafoya* (2007) 42 Cal.4th 147, 192; see generally *Turner v. Louisiana* (1965) 379 U.S. 466, 472-473 [85 S.Ct. 546, 13 L.Ed.2d 424] ["[t]he requirement that a jury's verdict 'must be based [solely] upon the evidence developed at the trial' goes to the fundamental integrity of all that is embraced in the constitutional concept of trial by jury"].)

"Juror 'misconduct raises a presumption of prejudice that may be rebutted by proof that no prejudice actually resulted.'" (*People v. Sandoval* (2015) 62 Cal.4th 394, 437; accord, *People v. Dykes, supra,* 46 Cal.4th at p. 809.) In determining whether prejudice occurred, the trial court must consider whether there is any substantial likelihood a member of the jury panel was influenced by improper bias. (*Dykes*, at p. 809; *People v. Lewis* (2009) 46 Cal.4th 1255, 1309; *People v. Nesler* (1997) 16 Cal.4th 561, 579.) If, based on the entire record in the case, there is any substantial likelihood of juror bias, the verdict cannot stand. (*In re Boyette* (2013) 56 Cal.4th 866, 889-890; *In re Carpenter* (1995) 9 Cal.4th 634, 653.)

Once the trial court becomes aware of juror misconduct, it is "'the court's duty to make whatever inquiry is reasonably necessary to determine if the juror should be discharged *and whether the impartiality of other jurors had been affected*.'" (*People v. Ramirez* (1990) 50 Cal.3d 1158, 1175; accord, *People v. Virgil* (2011) 51 Cal.4th 1210, 1284; *People v. Farnam* (2002) 28 Cal.4th 107, 141.) The trial court has "'considerable discretion in determining how to conduct th[is] investigation.'" (*Virgil*, at p. 1284; *People v. Prieto* (2003) 30 Cal.4th 226, 275 [same].) In reviewing the trial court's ruling, we accept the trial court's credibility determinations and findings of fact; however, whether prejudice arose from juror misconduct is a mixed question of law and fact subject to an appellate court's independent determination. (*People v. Merriman* (2014) 60 Cal.4th 1, 95; *People v. Lewis, supra,* 46 Cal.4th at p. 1309; *People v. Nesler, supra,* 16 Cal.4th at p. 582.)

2. *The Court's Investigation Was Insufficient To Ensure the Remaining Jurors Had Not Been Tainted by Juror 10's Misconduct in Consulting the Penal Code*

At the threshold, the parties agree with the trial court that juror 10's consultation of the Penal Code for information concerning the difference between murder and manslaughter was misconduct and, as a consequence, that juror was properly excused from the panel. (*People v. Wilson* (2008) 44 Cal.4th 758, 829 ["'[a] jury's verdict in a criminal case must be based on the evidence presented at trial, not on extrinsic matters'"]; *People v. Tafoya, supra,* 42 Cal.4th at p. 192 ["a juror who 'consciously receives outside information, discusses the case with nonjurors, or shares improper information with other jurors' commits misconduct"]; *In re Hamilton* (1999) 20 Cal.4th 273, 294 [review of outside sources, such as newspaper articles about case, is misconduct].)

The trial court also acted properly in immediately conducting a hearing to determine whether there was a substantial likelihood the misconduct had tainted the jury. (*People v. Virgil*, *supra*, 51 Cal.4th at p. 1284; *People v. Ramirez*, *supra*, 50 Cal.3d at p. 1175.) The scope of that inquiry, however, was too limited.

During the court's investigation, juror 4 stated juror 10 had not only looked up the differences between murder and manslaughter in the Penal Code, but also shared, albeit "in general terms," those differences with other members of the jury, including differences in sentencing for both crimes. Juror 11 appeared to confirm juror 4's account. At that point, the court should have tried to learn exactly what juror 10 had said to the other jurors. No such inquiry was made. Rather than asking any general questions designed to elicit that information, the court followed up juror 4 and juror 11's revelations with the narrow question whether the jury had discussed "what the sentences were for the various different crimes." Satisfied that specific sentencing information had not been imparted, the court proceeded to instruct the jury not to consider punishment in reaching its verdict, concluding the newly constituted jury could follow that admonition.

As discussed, once jury misconduct occurs, prejudice is presumed. In determining whether the court erred in refusing to declare a mistrial based on that misconduct, we must evaluate whether the court's discharge of juror 10 and its admonition to the newly constituted jury to follow its directions was sufficient to cure any taint. Unfortunately, the limited inquiry conducted by the court precludes meaningful review. It appears juror 10 did not specifically inform the other jurors that murder carries an indeterminate term of either 15 or 25 years to life, while voluntary manslaughter can result in a sentence as short as three years. But because the court did not ask what juror 10 had said "in general" about the differences in sentences for those offenses—and we know he said something—it is impossible to assess the impact of his misconduct and the potential curative effect of the admonition given at a trial at which the central question was whether Gray's killing amounted to murder or manslaughter. (Compare *People v. Tafoya, supra,* 42 Cal.4th at pp. 192-193 ["[a]n admonition by the trial court may also dispel the presumption of prejudice arising from any misconduct"] and *People v. Zapien* (1993) 4 Cal.4th 929, 996 [same] with *People v. Vigil* (2011) 191 Cal.App.4th 1474, 1488 ["reversible error for juror misconduct 'commonly occurs where there is a direct and rational connection between the extrinsic material and a prejudicial jury conclusion, and where the misconduct relates directly to a material aspect of the case'"] and *Marino v. Vasquez* (9th Cir. 1987) 812 F.2d 499, 506 [same]; see also *Wardlaw v. State* (Md. App. 2009) 971 A.2d 331, 338-339 [juror's Internet research on oppositional disorder and her subsequent reporting of her findings to her fellow jurors during deliberations warranted reversal of judgment; court's admonition to disregard Internet research on such significant issue in case was insufficient to cure presumption of taint].)

The record shows the jury was sharply divided, both before and after juror 10 was discharged, as to which type of homicide Bright had committed, sending several notes to the court stating it was deadlocked. It also establishes juror 10 discussed some aspects of the differences in sentencing as it relates to those different offenses. Without a more complete inquiry as to what information juror 10 actually shared with the rest of the jury, we cannot say with confidence his discharge and the court's general admonition

to the jury not to consider sentencing were sufficient to cure the taint caused by the misconduct. Under the circumstances, without confidence in the impartiality of the jury, we have no choice but to reverse the judgment. (*People v. Vigil, supra,* 191 Cal.App.4th at p. 1488; *Lankster v. Alpha Beta Co.* (1993) 15 Cal.App.4th 678, 683 [in light of the presumption of prejudice that arises from juror misconduct and "faced with an inadequate record" to rebut the presumption, court had no choice but to reverse judgment]; cf. *In re Carpenter*, *supra*, 9 Cal.4th at p. 657 [presumption of prejudice rebutted, in part, by lack of showing that juror revealed the information she obtained from external sources to other members of the jury].)[2]

DISPOSITION

The judgment is reversed, and the matter is remanded to the trial court for a new trial.

PERLUSS, P. J.

We concur:

ZELON, J.

KEENY, J.*

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2 Bright has also argued the court committed several other procedural errors including its admission of the full audiotape of his police interview. He did not challenge the sufficiency of the evidence supporting his conviction. In light of our holding reversing the judgment, we need not address Bright's other procedural challenges.

* Judge of the Los Angeles County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.