

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA,)	
)	
)	
v.)	Criminal No. 95-25-B-H
)	
KENNETH MEADER,)	
)	
DEFENDANT)	

ORDER ON DEFENDANT’S MOTION FOR MISTRIAL

This motion for mistrial grows out of an incident that occurred on the last day of the trial. While the jury was deliberating, defense witness Arthur Decato—an employee of the defendant and boyfriend of the defendant’s daughter—was outside the courthouse, smoking, standing next to an 18-year-old male whom he had never met. They discussed the condition of the young man’s car and transmission. They came inside, to the hallway outside the courtroom and sat down next to the metal detector. Mr. Decato asked the young man what he was doing there. The young man replied that his mother was on the jury. Mr. Decato then said that he was a witness for the trial. The young man said “Once she sets her mind that’s it, because she had been abused.” Tr. of Proceedings at 21 (May 6, 1996). There was no other exchange between them. Soon thereafter the defendant’s lawyer announced that he had been informed that the jury was returning with a verdict, and Mr. Decato returned to the courtroom. After the verdict of guilty was announced and the audience left the courtroom, Mr. Decato saw the young man near the stairway, and the young man said “I’m sorry.” Id. at 16, 22. Mr. Decato never saw the young man again.

The foregoing description of what took place is based upon testimony that Mr. Decato gave on May 6, 1996. The defendant's lawyer had heard of the incident and had requested a conference of counsel. I conferred with the defendant's lawyer and the government lawyer, and we agreed that the first step was to take the testimony of Mr. Decato. After Mr. Decato's testimony, I conferred further with the lawyers, and we concluded initially that the next step should be an interview of the young man who, we were satisfied, was the son of one of the jurors that we had identified based upon the young man's physical description, where he said he came from and a name that he apparently gave to Mr. Decato. We also learned, however, that the young man was just 18 years old and that he lived with his mother, the juror. We therefore became concerned that any interview of the young man or any testimony from him would lead inevitably to a discussion between him and his mother before there could be any inquiry of the juror and thereby prevent fresh answers from either him or the juror. Accordingly, after substantial discussions with the lawyers, I agreed to bring the juror in herself as if she were coming in for regular jury service and thereby avoid any advance warning of the nature of the inquiry. This occurred on May 24, 1996, and I questioned the juror in the presence of the lawyers. I will recount her statements as they are material to the issues raised by the defendant.

VOIR DIRE

The juror stated on May 24, 1996, that she had been subjected to verbal and mental abuse by an ex-husband approximately four years ago and that her son had been subjected to physical abuse. The juror also obtained a protection from abuse order in the state court system. At voir dire, I had inquired of the panel as follows:

There may be evidence in this case concerning a domestic relationship in which physical force or abuse was involved or threatened. Does any member of the panel have personal views or personal experiences that would prevent you from deciding this type of case fairly and impartially? If so, would you please stand?

Partial Tr. of Proceedings at 2 (Mar. 19, 1996). This juror did not respond to this voir dire question in any way, and the defendant's first argument for a mistrial is that she thereby answered incorrectly. The defendant's position is unpersuasive. The juror's answers to my questions on May 24, 1996, reveal that her past personal experience was of verbal or mental abuse. Even if the physical abuse of her son is taken into account, there is no suggestion that her ex-husband's treatment led her to feel any prejudice toward this defendant. Instead, all of her answers reveal that, if anything, she gave this defendant the benefit of the doubt.

The defendant also argues that his own written voir dire questions were better than the ones that I asked and that his questions should have been asked. I gave the lawyers full opportunity, however, to challenge the voir dire questions that I posed to the panel and to request additional questions. No objection was made to my voir dire questions, and no requests for additional voir dire questions were made. Both the government and the defendant stated they had no objections to the jury as impaneled. Therefore, any objections based upon my failure to ask different voir dire questions were waived. See United States v. Noone, 913 F.2d 20, 36 (1st Cir. 1990) (citing United States v. Lookretis, 422 F.2d 647, 651 (7th Cir. 1970)), cert. denied, 500 U.S. 906 (1991).

ADEQUACY OF INVESTIGATION

When an accusation is made about improper juror conduct, a court has the sensitive task of proceeding far enough to determine whether there has been any such misconduct, but not so far as to intrude unnecessarily into jurors' lives. See United States v. Boylan, 898 F.2d 230, 258 (1st Cir.), cert. denied, 498 U.S. 849 (1990); United States v. Hunnewell, 891 F.2d 955, 961 (1st Cir. 1989). The court must also avoid at all costs exploring the deliberation process of the jury. Fed. R. Evid. 606(b). As a result, the scope of the inquiry is subject to an informed discretion as to what investigation is needed to determine the facts. United States v. Ianniello, 866 F.2d 540, 544 (2d Cir. 1989).

Here, the defendant complains that I have not obtained a statement from the juror's son. I find it unnecessary and inadvisable to obtain such a statement for the following reasons. First, I am crediting the account of Mr. Decato—the defendant's employee, witness and boyfriend of his daughter—as to what the young man said to Mr. Decato. There is no reason, therefore, to inquire of the young man further as to what he told Mr. Decato. Taking Mr. Decato's account as true,¹ I find nevertheless that the juror herself has provided an adequate explanation of what took place to satisfy me that no juror misconduct occurred. Second, now that I have interviewed the juror and she is fully aware that her son is the cause of the inquiry, I am concerned that to bring her son in by subpoena or to send an FBI agent and private investigator to interview him (as was proposed by the lawyers) would unnecessarily increase the juror's apprehension and concern that her son is now in trouble notwithstanding her explanation of what took place. Third, to pursue from her son things that the

¹ As the defendant's daughter's boyfriend, an employee and witness for the defendant, Mr. Decato had every incentive to testify to everything that might make it more likely that a mistrial would be granted. He also discussed the incident with the defendant's daughter and son. There is no reason, therefore, to think that he omitted anything that was said.

juror may or may not have said to him would be embarking on a fishing expedition contrary to the admonitions of the appellate courts to keep the jury process and the jurors themselves free of unnecessary intrusion. Finally, any interview I might conduct of the son now would clearly be preceded by a frank and candid discussion between juror and son, thereby making any such interview of limited value.

We could have interviewed the son first, but defense counsel maintained at the May 17, 1996, conference that it was better to go straight to the juror and hear her statement and explanation free of any prior warning. I was persuaded and remain convinced that that was the appropriate thing to do and that nothing further is required at this point.

JUROR BIAS

The heart of the defendant's motion for mistrial is that this juror was biased (a) because of her previous experience with an ex-husband, and (b) because the son said words to the effect that once his mother makes her mind up, that's it. The record supports neither charge. As I have already stated, the juror's statement made to me in the presence of the lawyers was that if her previous experience had any effect it was to lead her to evaluate the evidence more carefully to the defendant's benefit.² So far as the son's apparent belief that his mother had

² At the interview on May 24, 1996, the juror stated:

Q. Do you think that those experiences with your ex-husband affected you as you heard this testimony about abuse?

A. It did in a way because I had to really think out the case and say, you know, is this—you know, is there abuse here or is it that this man has a—a mental problem or what, you know, I was—this is what I was going in my mind is, is this man mentally, you know, was he—was it a—a thing that he—how can I put this. Because I took psych, also, so I—I know a little bit about the psychic mind and how it works. And sometimes when you're under an awful lot of stress you will

(continued...)

made up her mind in advance is concerned, Mr. Decato did at first testify quite broadly as to what the son apparently said. Specifically: “He said that his mother had [her] mind set before this took

² (...continued)

do things on the spur of the moment. But the other jurors made me see that this was premeditated, he thought it out before he—he actually did the crime. So—

Q. Do you think that your experience had any effect on your fairness or impartiality?

A. I think I was very fair because I thought it all out and, you know, I would not make—like I said, I wouldn’t make a judgment on someone unless I really thought something out. And I wouldn’t let my own personal feelings interfere in any way.

Q. Did you have a—a tentative conclusion as to guilt or innocence before you heard the evidence?

A. No.

Partial Tr. of Proceedings at 8-9 (May 26, 1996).

Q. Do you think that any of your experiences gave you greater sympathy toward the Government’s case and more—made you feel more negative toward the Defendant’s case in this trial?

A. The Government’s case is?

Q. The prosecution. In other words, did you—because of your experiences did you lean more toward guilt from the outset than toward innocence from the outset?

A. It really—I went by what was on the table, and I—you know, and I put my own feelings aside. I went by what was on the table. I went by what was—what we discussed, all the jurors.

Q. Right

A. The evidence.

Q. Don’t tell me what you discussed, but go ahead.

A. The evidence that was mentioned.

Q. Right.

A. And that’s the only thing I went by. By nothing else.

Id. at 11-12.

place, the case itself. And he said, ‘she don’t change her mind once she’s got it set.’” Tr. of Proceedings at 7 (May 6, 1996). Similarly: “When he come out and told me that once his mother makes up her mind, that is before the trial, I didn’t like that at all.” Id. at 14. But upon further questioning, Mr. Decato revealed that the young man had never stated that his mother had said anything to him at all about the trial. Id. at 18-19. In fact, upon follow-up questioning by defense counsel, Mr. Decato revealed that the statement about the mother’s characteristic of refusing to change her mind was just the son’s general description of the mother’s character, juxtaposed with the son’s comments about abuse:

Q. Mr. Decato, I’m a little confused in terms of what this individual said to you. When he was talking about his mother’s mind being made up, did he say what her mind was made up over?

A. No, other than she won’t change her mind once she sets her mind.

Q. Something was said that led you to believe how the mind was made up?

A. His facial expression, when he was talking to me, he said once she makes up her mind, that’s it.

Q. Did you know whether her mind was made up that he was guilty or innocent?

A. Not really. Not really to know one way or another but the way he was talking to me, once she sets her mind, that was it.

Q. It was said in the context of the discussion concerning her being abused?

A. Exactly.

Q. What did he say about her being abused.

A. Either a step [father], or a boy friend [sic] that she had been abused before.

Q. How did that relate with her mind being made up?

A. He said, once my mother sets her mind, that's it because she had been abused. So that reflected on me that they was going to come back with a guilty verdict.

Id. at 19-20.

Finally, when I asked Mr. Decato to go very slowly over the sequence of who said what, it developed that, after Mr. Decato identified himself as a witness for the defense, the young man simply volunteered that once his mother “sets her mind that's it, because she had been abused.” Id. at 21. As the juror herself revealed in her statement to me in front of the lawyers, that description actually characterizes how she deals with her son:

Q. If he said, my mother doesn't change her mind once it's set, how would you respond to that?

A. That's the way I am with him, if I tell him this is it, that's all.

Q. Can you think of anything that—

A. No, I think he was trying to make himself look good, you know, I'm big, my mom's on the jury trial. You know, I think this is—because he does, he likes to pump himself up, make himself look big.

Q. Okay. If he said, she makes her mind up, that's it, what would your response be to that?

A. That, you know, again, it's the way I—I act with him, you know, that's it, you know.

Partial Tr. of Proceedings at 6-7 (May 24, 1996). Both Mr. Decato's characterization of what took place—a young man who didn't know him coming up and talking about details of his mother on the jury—and the juror's spontaneous description of her son as liking to act important—are consistent.³

MISCONDUCT OF THE JURY AS A WHOLE

The defendant would like to enlarge the inquiry now into general jury misconduct. I observe first of all that this is precisely the concern that leads the appellate courts to counsel district judges to keep their inquiry narrow. See, e.g., Mahoney v. Vondergritt, 938 F.2d 1490, 1491 (1st Cir. 1991), cert. denied, 502 U.S. 1104 (1992). Here, the defendant clutches at a statement by the juror out of context that, he infers, shows that the jury began its deliberations before the trial was over.

The question-and-answer sequence dispels any such inference:

Q. Okay. If he said, she makes her mind up, that's it, what would your response be to that?

A. That, you know, again, it's the way I—I act with him, you know, that's it, you know.

Q. Is there anything about the trial—

A. No.

Q. —that you think those would relate to?

³ Another element of confirmation is Mr. Decato's testimony that the young man said to him that the jury would complete its deliberations that day because "the judge don't like to go past supper." Tr. of Proceedings at 10 (May 6, 1996). The record will reveal that in fact I had been running 8:00 a.m. to 2:00 p.m. trial days with no luncheon recesses, but only two fifteen-minute coffee breaks, and that supper therefore was never an issue during the trial. Furthermore, no deputy marshal or court officer would have said any such thing to the deliberating jury, because it is my custom to provide supper to the jury if they are willing to continue their deliberations. The young man was obviously making things up in order to sound as though he had inside information.

I reject the defendant's argument: "It goes without saying that any individual, when confronted directly as [the juror] was on May [24], 1996, with the allegation that she was biased, is going to tend to deny any claim of bias and reach out for anecdotal evidence to support that denial." Mem. in Supp. of Def.'s Mot. for Mistrial or for Further Investigation and Hr'g at 6. Instead, I find that the juror was very candid and straightforward—caught by evident surprise on the whole subject, yet with a ready, logical and believable explanation of her son's statements. Her statements are not inherently suspect. See Smith v. Phillips, 455 U.S. 209, 217 n.7 (1982).

A. No, no, nothing, no. Because, like I said, for the trial I had to really—in fact, I—I retarded everyone else in the deliberation because I had a life in my hand and I did not know, you know, if I should go along with everybody else. Everyone else was going towards guilty. I was not. Because I waited until, you know, I heard more about it and more evidence and, you know, we deliberated before I finally said yes.

Partial Tr. of Proceedings at 7 (May 24, 1996). Because the juror said that she waited until she heard “more about it and more evidence,” the defendant infers that the jury had been discussing the case before all the evidence was in. The juror’s statement is first of all incompetent under Fed. R. Evid. 606(b) and was unresponsive to the question. Under Fed. R. Evid. 606(b), it furnishes absolutely no basis for further inquiry. It is apparent from the context, moreover, that the juror was talking about the deliberations process at the end of the trial and was referring to her need to hear more discussion of the evidence during the deliberations before she would agree to a guilty verdict. Thus, there is no basis for any conclusion of misconduct by the jury.

Accordingly, the defendant’s motion for mistrial is **DENIED**.

SO ORDERED.

DATED THIS 11TH DAY OF JULY, 1996.

D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE