

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

HARVEY MALONE,

Defendant-Appellee.

UNPUBLISHED

September 15, 2009

No. 289151

Wayne Circuit Court

LC No. 08-002525-FC

Before: O’Connell, P.J., and Talbot and Stephens, JJ.

PER CURIAM.

The prosecutor appeals by leave granted an order granting defendant Harvey Malone a new trial on one count of possession of a firearm during the commission of a felony, MCL 750.227b. We reverse.

After a jury trial, defendant was convicted of one count of carrying a concealed weapon, MCL 750.227, and one count of felony-firearm, MCL 750.227b. The jury acquitted defendant of the more serious charge, assault with intent to commit murder, MCL 750.83. The prosecution claims that the trial court abused its discretion in granting a new trial. We agree. We review a trial court’s decision on a motion for a new trial for an abuse of discretion. *People v Cress*, 468 Mich 678, 691; 664 NW2d 174 (2003). “An abuse of discretion occurs when the court chooses an outcome that falls outside the range of reasonable and principled outcomes.” *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008).

A trial court may grant a motion for a new trial “on any ground that would support appellate reversal of the conviction or because it believes that the verdict has resulted in a miscarriage of justice.” MCR 6.431(B).¹ Defendant conceded that there was no ground that would support appellate reversal, so defendant relied on the second “prong” of the court rule, which considered whether “a miscarriage of justice” occurred, in seeking a new trial. In particular, defendant claimed that the verdict should be overturned because the jury apparently misinterpreted their instructions.

¹ MCL 770.1 also provides for granting a new trial to a criminal defendant, but MCR 6.431(B) has superseded it. *People v Bart (On Remand)*, 220 Mich App 1, 10-11; 558 NW2d 449 (1996).

In the instant case, it is not necessary to define what a “miscarriage of justice” precisely is because the trial court based its decision solely on information that it was prohibited from considering.

Generally, jurors may not impeach their own verdict by subsequent affidavits showing misconduct in the jury room. . . . [O]nce a jury has been polled and discharged, its members may not challenge mistakes or misconduct inherent in the verdict. Rather, oral testimony or affidavits may only be received on extraneous or outside errors, such as undue influence by outside parties. [*People v Budzyn*, 456 Mich 77, 91; 566 NW2d 229 (1997) (internal citations omitted).]

Here, the trial judge visited the jurors in the jury room after the jury was polled and dismissed. At that time, when asked about the seemingly inconsistent verdicts of “not guilty” for assault with intent to murder and “guilty” for felony-firearm, one juror responded that they felt forced to convict on the felony-firearm charge merely because defendant had a gun. Even though only one juror spoke up, the other jurors apparently nodded in agreement. The trial court granted defendant’s motion for a new trial based on a miscarriage of justice because it concluded that a correct interpretation of the jury instructions would have resulted in a “not guilty” verdict for defendant on the felony-firearm count.²

Seeing that the juror’s comments related to the jury’s deliberative process and the interpretation of the judge’s instructions, it is clear that these comments did not relate to any external influences. In fact, this Court has already held that failing to follow the judge’s instructions inheres in the verdict and cannot be impeached by juror testimony. *Heintz v Akbar*, 161 Mich App 533, 540-541; 411 NW2d 736 (1987). Furthermore, “[a]ny conduct, even if misguided, that is inherent in the deliberative process is not subject to challenge or review.” *People v Fletcher*, 260 Mich App 531, 540; 679 NW2d 127 (2004). This Court and trial courts are bound by stare decisis. MCR 7.215(C)(2); *People v Cross*, 281 Mich App 737, 738; 760 NW2d 314 (2008).

Defendant’s main argument in favor of upholding the trial judge’s decision is that Michigan has no counterpart to FRE 606(b),³ which prohibits jurors in the federal system from

² Other factors the trial court considered included the fact that defendant was elderly and in poor health, the victim arguably terrorized defendant leading up to the charged conduct, and the penalty of a mandatory two-year prison term for felony-firearm.

³ FRE 606(b) states,

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 or any other juror’s mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror’s mental processes in connection therewith. But a juror may testify about (1) whether extraneous prejudicial information was improperly brought to the jury’s attention, (2) whether any outside influence was improperly brought to bear upon any juror, or (3) whether there was a mistake in

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testifying about matters intrinsic to the deliberative process. Although Michigan does not have a codified prohibition on jurors testifying about internal or intrinsic matters, this is not dispositive because Michigan's common-law prohibition on such testimony is just as binding.

Given that the comments from the juror involved matters inherent to the verdict, the trial court was expressly prohibited from considering those matters. Because the trial judge never should have considered the juror's comments, the judge's decision to grant the new trial based solely on those comments was outside the range of reasonable and principled outcomes. Therefore, the trial judge abused his discretion in granting defendant a new trial on his felony-firearm count.

We reverse and remand for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Peter D. O'Connell

/s/ Michael J. Talbot

/s/ Cynthia Diane Stephens

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entering the verdict onto the verdict form. A juror's affidavit or evidence of any statement by the juror may not be received on a matter about which the juror would be precluded from testifying.