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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Danny Lee Jones,

10 Petitioner,

11 v.

12 Charles L. Ryan, et al.,

13 Respondents.
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No. CV-01-00384-PHX-SRB

DEATH PENALTY CASE

ORDER

15 Before the Court is Respondents' Motion to Strike Juror Declarations (Doc. 251).
16 This case is before the Court on remand from the Ninth Circuit Court of Appeals for
17 reconsideration, pursuant to *Martinez v. Ryan*, 132 S. Ct. 1309 (2012), and *Dickens v.*
18 *Ryan*, 740 F.3d 1302 (9th Cir. 2014) (en banc), of Jones' claims of ineffective assistance
19 of counsel. Jones filed his supplemental *Martinez* brief on December 17, 2015. (Doc.
20 246.) Respondents filed a response and Jones filed a reply. (Docs. 247, 250.)

21 Jones attached two exhibits to his reply brief. They are declarations from jurors
22 from Jones' 1993 trial.¹ Exhibit 26 is a declaration by juror Gwendelyn Munro, dated
23 August 22, 2002. (Doc. 250-1.) She states that she "never agreed with the conclusions of
24 the jury in the case," "never believed [] Jones murdered the little girl," "had many doubts
25

26 ¹ Jones was convicted of two counts of first-degree murder and one count of
27 attempted first-degree murder. Jones killed his friend Robert Weaver with a baseball bat;
28 attacked Weaver's grandmother with the bat (she died from her injuries after trial); and
killed Weaver's seven-year-old daughter, Tisha, dragging her out from under her bed,
striking her with the bat, and strangling or suffocating her. *State v. Jones*, 185 Ariz. 471,
477-78, 917 P.2d 200, 206-07 (1996). The trial judge sentenced Jones to death.

1 about whether or not [] Jones was responsible for the death of the grandmother,” believed
2 Jones murdered Robert Weaver but “never thought he should be found guilty of First
3 Degree Murder for Mr. Weaver’s death,” did not believe Weaver’s death warranted the
4 death penalty, and “felt pressured by other members to change my vote because the
5 verdict had to be unanimous.” (*Id.* at 1–2.)

6 Exhibit 27 is a declaration by juror Mary Lou Herridge, dated August 20, 2002.
7 (Doc. 250-2.) She states that she would not have sentenced Jones to death for Robert
8 Weaver’s murder and if she had heard additional evidence regarding Frank Sperlazzo she
9 would not have voted to convict Jones of Tisha Weaver’s murder.² (*Id.* at 1–2.)

10 Respondents contend that common law and the Federal Rules of Evidence prohibit
11 the Court from considering the declarations. The Court agrees. Juror testimony cannot be
12 used to impeach a verdict unless “extrinsic influence or relationships have tainted the
13 deliberations.” *Tanner v. United States*, 483 U.S. 107, 120 (1987). Similarly, Rule
14 606(b)(1) prohibits juror testimony “about any statement made or incident that occurred
15 during the jury’s deliberations; the effect of anything on that juror’s or another juror’s
16 vote; or any juror’s mental processes concerning the verdict or indictment.” Fed. R. Evid.
17 606(b)(1). The Rule states that “[t]he court may not receive a juror’s affidavit or evidence
18 of a juror’s statement on these matters.” *Id.* The only exceptions to the Rule concern
19 questions of whether “extraneous prejudicial information was improperly brought to the
20 jury’s attention”; “outside influence was improperly brought to bear upon any juror”; or
21 “a mistake was in entering the verdict onto the verdict form.” Fed. R. Evid. 606(b)(2).

22 Jones cites the juror declarations in his reply, arguing that “at least two jurors
23 would have sentenced Jones to life.” (Doc. 250 at 20.) He contends that the Court may
24 consider the declarations because they do not challenge the verdict within the meaning of
25 Rule 606(b) but are offered in response to Respondents’ argument that a death sentence
26 was a foregone conclusion in Jones’ case. (Doc. 252 at 2.)

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28 ² The additional evidence purportedly would have supported Jones’ testimony at
trial that Sperlazzo killed Tisha.

1 As Respondents note, courts have rejected the argument that juror affidavits may
2 be considered under Rule 606(b) in support of ineffective assistance of counsel claims.
3 See *Brown v. United States*, 720 F.3d 1316, 1337 (11th Cir. 2013) (juror’s affidavit,
4 swearing that additional mitigation evidence gathered during the postconviction process
5 might have had an impact on the jury’s penalty phase deliberations, was not competent
6 evidence); *Hoffner v. Bradshaw*, 622 F.3d 487, 501 (6th Cir. 2010) (juror’s affidavit
7 stating that the defendant’s lack of emotion was a factor in voting to recommend the
8 death penalty was properly excluded from consideration); *Williams v. Collins*, 16 F.3d
9 626, 636 (5th Cir. 1994) (district court did not abuse its discretion in excluding testimony
10 from jurors as to whether their deliberations would have been different if they had been
11 presented with additional mitigating evidence); *Coleman v. Sisto*, No. 2:09-CV-0020-
12 DAD, 2012 WL 6020095, at *23 n.13 (E.D. Cal. Dec. 3, 2012) (“Under [Rule 606(b)],
13 these post-verdict juror affidavits cannot be considered as evidence in support of
14 petitioner’s ineffective assistance of counsel claim.”).

15 The proffered declarations concern the jurors’ deliberative process and the
16 potential effect of evidence of their votes. Therefore, they may not be considered under
17 Rule 606(b). See, e.g., *Smith v. Schriro*, No. CV-03-1810-PHX-SRB, 2006 WL 726913,
18 at *22–23 (D.Ariz. Mar. 21, 2006).

19 Accordingly,

20 **IT IS ORDERED** granting Respondents’ Motion to Strike (Doc. 251). Exhibits
21 26 and 27 to Jones’s reply brief (Doc. 250) are stricken from the record.

22 Dated this 15th day of June, 2016.

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Susan R. Bolton
United States District Judge