

IN THE SUPREME COURT OF IOWA
SUPREME COURT NO. 17-0085

THE STATE OF IOWA,

Plaintiff-Appellee,

vs.

LEE SAMUEL CHRISTENSEN,

Defendant-Appellant.

APPEAL FROM IOWA DISTRICT COURT FOR EMMET COUNTY
CASE NO. FECR010898
HONORABLE DAVID A. LESTER, JUDGE
THIRD JUDICIAL DISTRICT OF IOWA

RESISTANCE TO APPLICATION FOR FURTHER REVIEW
(Iowa Court of Appeals Decision: April 18, 2018)

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QUESTION PRESENTED FOR REVIEW

Does *State v. Webster*, 865 N.W.2d 223 (Iowa 2015), permit de novo review of a district court's ruling denying a rule-based and constitution-based claim of jury misconduct?

TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW.....2

STATEMENT RESISTING FURTHER REVIEW.....4

STATEMENT OF THE CASE.....6

ARGUMENT.....8

CONCLUSION.....13

CERTIFICATE OF COMPLIANCE.....14

STATEMENT RESISTING FURTHER REVIEW

The Iowa Court of Appeals properly employed de novo review in evaluating Lee Christensen's claim of jury misconduct. *State v. Christensen*, No. 17-0085, 2018 WL 1865353(Iowa App. April 18, 2018). In employing de novo review the Court of Appeals properly found not only that Christensen's trial jurors had engaged in misconduct, but under any measure, the trial court had abused its discretion in denying Christensen's Motion for New Trial.

Additionally, the State is mistaken in seeking review under Iowa Rule of Appellate Procedure 6.1103(1)(b)(4), by alleging that the Court of Appeals has issued conflicting opinions involving rule-based juror misconduct and bias claims. Here, the Court of Appeals, relied on *State v. Webster*, 865 N.W. 2d 223 (Iowa 2015) in which this court cited the constitutional underpinnings of the rule of criminal procedure on which Christensen's motion for new trial was, in part, based. That rule, 2.24(2)(b)(9) was, by contrast, *not* the basis for the Court of Appeals analysis of jury misconduct in *State v. Silva*, No. 17-0802, 2018, WL1858294 (Iowa App. April 2018). Stated simply, there is no "split" in decisions in what level of deference the appellate courts must give the district court in rural-based juror claims. Moreover, the Court of Appeals employed well-recognized principles in its analysis of juror misconduct alleged by Christensen in seeking a new trial. By any measure, the integrity of the verdict in Christensen's case was

undermined by misconduct and a new trial properly granted. This court should deny the State's request for further review.

STATEMENT OF THE CASE

Nature of the Case:

Christensen acknowledges that the State is seeking further review of a decision of the Court of Appeals pursuant to Iowa Rule of Appellate Procedure 6.1103.

Course of Proceedings and Facts:

Christensen conceded that he had shot Thomas Bortvit, but argued that he acted out of passion, warranting a verdict of voluntary manslaughter. He was found guilty of second-degree murder. Slip op. at * 2. As described in the State's Application for Further Review, Christensen filed a motion for new trial arguing not only that the jury had engaged in misconduct by considering social media and other extraneous information, but also that the jury's deliberations were tainted by jury bias. Motion for New Trial; App. 24-27. His motion was brought under *both* Rule 2.24(2) and state and federal constitutional provisions assuring him a fair trial and due process. Motion for New Trial; App. 24-27.

After granting Christensen's motion for a jury poll, the trial court conducted a hearing taking sworn testimony from all twelve jurors. Ruling; App. 33. In denying Christensen's motion for new trial on jury misconduct and bias grounds, the trial court invoked both Rules 2.24(2)(b)(2) (authorizing a new trial when "the jury has received any evidence... not authorized by the court...") and 2.24(2)(b)(9)

(permitting grant of new trial if “the defendant has not received a fair and impartial trial.”). Ruling; App. 40. The trial court denied the defendant’s motion for new trial, based on purportedly erroneous pretrial and trial rulings, as well as on Christensen’s claims of jury misconduct and bias. Ruling; App. 35, 51.

Among other challenges, Christensen contended on appeal that the trial court had erred in not granting a new trial based on jury misconduct and jury bias. *See* Appellant’s Br., 17-30. The Court of Appeals found that the “constitutional undergirding of [Rule 2.24(b)(9)] and the district court’s reliance on the rule requiring a fair and impartial trial mandate de novo review of the fact findings.” Slip op. at * 5. Finding that Christensen’s jurors obtained information from sources explicitly prohibited by the court’s admonition, and that this extraneous information had been received during deliberations, the Court of Appeals concluded that the jurors had violated Rule 2.24(b)(2), and that the information introduced in the jury room was calculated to and with reasonable probability did influence the jury. The denial of Christensen’s new trial motion constituted an abuse of discretion. Slip op. at * 17.

ARGUMENT

I. The Court of Appeals properly adopted de novo review of Christensen's jury misconduct claim.

Preservation of Error and Waiver:

Christensen preserved error on grounds that the jury had engaged in misconduct by asserting in his motion for a new trial that the jury's exposure to and influence by extraneous information had violated Rule 2.24(2) of the Iowa Rules of Criminal Procedure, and state and federal constitutional provisions assuring him a fair trial and due process of law. In its appellate brief, the State did not contest error preservation on the jury misconduct issue. State's Br. 10-11.

Standard of Review:

The Court reviews a denial of a motion for a new trial based on juror misconduct or juror abuse for an abuse of discretion. *State v. Webster*, 865 N.W. 2d. 223, 231 (Iowa 2015); when constitutional issues are involved the Court has reviewed fact-finding de novo. *Webster* at 231 n.4.

Merits:

As noted above, Christensen brought his motion for new trial under both Rule of Criminal Procedure 2.24(2) and the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and Article I, Sections 9 and 10 of the Constitution of the State of Iowa. App. 24. In overruling Christensen's motion alleging errors during trial rulings, the trial court denied the motion stating that the

court's trial rulings neither prejudiced nor violated his rights to a fair trial and due process of law under the constitutions of the United States and the State of Iowa. Ruling; App. 35. In its ruling on Christensen's claims of jury misconduct and bias, the trial court explicitly recognized the "fair and impartial trial" implications of Rule 2.24(2)(b)(9) and the constitutional implications of a jury tainted by bias. "Juror bias justifies a new trial even where no misconduct has occurred. [*Webster*] at 237 n.7. ('a jury consisting of eleven impartial jurors and one actually biased juror is constitutionally infirm without any showing that there was juror misconduct "calculated to, and with reasonable probability did, influence the verdict." ' ' ' ' Ruling; App. 48.

Given the "underpinnings" of the Rule, and the trial court's implicit recognition of the constitutional ramifications of jury misconduct and bias, the Court of Appeals was not remiss in applying de novo review to the trial court's factual findings.

This is particularly so given the contrast in the procedural posture of *Webster* compared to that in this case. In *Webster*, the district court denied Webster's post-trial motion based on Iowa Rules of Criminal Procedure 2.24(2)(b)(3)-(4), and (3)(a). *Webster* at 230. Additionally, "Webster did not indicate in his combined motion for a new trial and arrest of judgment the basis of his claim and he did not cite a statute, rule, or constitutional provision." *Webster* at

231. Moreover, on appeal Webster, although generally claiming a right to a fair trial under both the Iowa and United States constitutions, “did not identify any particular provision.” *Webster* at 232. Finally, even in seeking a new trial, Webster asserted only that he had been denied a fair trial based on juror misconduct “but did not advance a separate argument based on juror bias.” This Court, nonetheless, addressed the underlying merits of the bias claim without deciding the question of preservation. *Webster* at 232. Here, Christensen urged a new trial based on both specific provisions of the Iowa and United States constitutions, and Rule 2.24(2)(b)(9). Given the “underpinnings” of the rule and on Christensen’s specific claims that he was entitled to a new trial on constitutional grounds, de novo review was properly invoked by the Court of Appeals.

In seeking further review, the State has misrepresented the facts as found by the Court of Appeals. Far from “castigating [all] jurors for ‘blatant disregard’ of the district courts’ [sic] unambiguous admonition to refrain from the use of social media during trial,” State’s Br 12, the Court of Appeals found that the pre-deliberation Facebook contact by one juror and the post-deliberation access to information from Facebook by some other jurors and – conveyed to still others – constituted a violation of the court’s repeated admonitions. Slip op. at * 6-7.

Importantly, *each* juror during the jury poll was asked whether “before you and the other jurors reached your verdict and announced in the courtroom” did the

juror hear or see any comments that there might be public disturbance or violence if a certain verdict wasn't reached in the Christensen's case. The Court of Appeals correctly concluded:

- One juror heard in the jury room that “some people had seen it on Facebook” and that “there were some threats *against the jury* depending on what – decision was made.” (Emphasis added) Slip op. at *7. The women who had seen the Facebook post said that “there are people threatening the jury...” depending on what specific decision was made by the jury. Slip op. at *7. The discussion was “prior to” the announcement of the decision in open court. Slip op. at *7.
- A second juror testified that days before the verdict was announced, another juror had been told that the information containing threats or violence had been told that “it was all over Facebook.” Slip op. at *8.
- A third juror likewise heard something before the verdict was reached that *other jurors* reported that someone had told *them* “if it wasn't first degree, there would be a riot.” Slip op. at *8.
- Five additional jurors testified that before the jury returned to the courtroom to announce their verdict, other jurors had heard or seen on Facebook or on similar social media that there might be violence or

public disturbance if a particular verdict wasn't reached. Slip op. at *8-9.

Especially in light of the fact that jurors were not allowed to have their cell phones in the jury room, this information had to have been obtained by the jurors before the verdict was reached. Even affording the trial court the deference to which it was due, the Court of Appeals properly concluded that the facts warranted a conclusion that the jury's deliberations had been intruded upon by more than one source of extraneous information.

Finally, the Court of Appeals applied well-recognized principles in finding that either under the "stricter rule" described in *State v. Carey*, 165 N.W.2d 27, 29 (Iowa 1969), or the prejudice test described in *State v. Cullen*, 357 N.W.2d 24, 27 (Iowa 1984), the extraneous information obtained by the jury was "far from de minimus" and the trial court's denial of Christensen's motion for new trial amounted to an abuse of discretion. Slip op. at *17.

CONCLUSION

Lee Christensen respectfully requests that this Court deny the State's application for further review.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

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Dated: May 18, 2018

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