Expert Analysis

The Limits Of Juror Affidavits In California

By Alana Rotter

Law360 (March 4, 2019, 2:39 PM EST) – When talking to jurors after a verdict, lawyers sometimes discover that something went wrong in deliberations. Maybe jurors misunderstood an instruction or the verdict form. Maybe they relied on an instruction that the lawyer believes was legally erroneous. Maybe they flipped a coin, or did independent research.

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These are all tempting grounds on which to seek a new trial. After all, if the jury did not do its job correctly, why should its verdict be enforced? But this is easier said than done: Most evidence of what happened during jury deliberations is inadmissible under California law, meaning it cannot be the basis for granting a new trial.

The starting point is California Evidence Code Section 1150. Section 1150's first sentence is broadly permissive: It allows "any otherwise admissible evidence" of statements and conduct that are "likely to have influenced the verdict improperly." The second sentence, however, adds a critical restriction: "No evidence is admissible to show the effect" of the statement or conduct on a juror's vote "or concerning the mental processes by which it was determined."

Under Section 1150, affidavits are admissible to describe an overt act constituting juror misconduct. Affidavits may permissibly report, for example, that jurors consulted an outside attorney about issues in the case, gave false answers during voir dire, prejudged a case based on biases or expressly agreed to disregard the court's instructions.[1] Sworn affidavits containing such information should be submitted in support of a new trial motion — they cannot be added to the record for the first time on appeal.[2]

But affidavits revealing any juror's individual thought process, or the jury's collective reasoning, are inadmissible — and indeed, "irrelevant to any legal issue."[3] More specifically, courts may not consider evidence of "the jurors' motives, beliefs, misunderstandings, [and] intentions. ..."[4]

Affidavits purporting to describe how the jurors understood jury instructions or words on the verdict form therefore are inadmissible, even where they reveal "'deliberative error' in the jury's collective mental process — confusion, misunderstanding, and misinterpretation of the law."[5] Likewise, affidavits cannot describe how the jury arrived at its damages award.[6] Courts have explained that this thought-process bar "plays an important role in protecting the finality of jury verdicts."[7]

Section 1150's strict bar means that the Court of Appeal will reverse new trial orders that relied on affidavits about the jurors' thought processes. It may do so even if there was no objection to the affidavits in the trial court, so long as the issue is raised on appeal.[8]

This no-objection-required standard may be a surprise to lawyers familiar with the rule that failing to object to the admissibility of evidence in the trial court generally forfeits the objection on appeal. But because evidence of juror thought processes is not just inadmissible but also legally irrelevant, it cannot support a new trial order — the order must be reversed unless there is some other relevant, material evidence of prejudicial error.[9]

The recent decision in Guernsey v. City of Salinas[10] highlights the limits on evidence of juror deliberations, and other ways to show that that an error at trial influenced the jury's verdict. In Guernsey, the Court of Appeal determined that an instruction given to the jury was erroneous. But that was not the end of the road.

The California Constitution prohibits reversing a judgment based on "misdirection of the jury" or for procedural error, unless the error caused a "miscarriage of justice."[11] The California Supreme Court has interpreted this provision to mean that only prejudicial errors require reversal. [12] An appellant establishes prejudice by demonstrating a reasonable probability that the error affected the outcome of the trial.[13]

In an effort to demonstrate prejudice, the appellant in Guernsey had submitted affidavits in which jurors reported that the jury relied on the erroneous instruction to answer two questions on the verdict form, and that the jury decided that the

instruction did not allow them to reach a certain issue that they otherwise could have reached. Guernsey held that these statements were inadmissible: Their description of how a jury instruction influenced the verdict improperly "reveal[ed] the mental processes of" the jurors in violation of Section 1150.

In refusing to consider the juror affidavits, Guernsey disapproved of seemingly-conflicting language in another case. Specifically, Harb v. City of Bakersfield[14] had opined that the trial court correctly considered three jurors' statements that jurors discussed a particular instruction and had "'verbally agreed'" that the instruction "'did not permit us'" to find defendants liable.

Guernsey opined that those juror statements went to how the jury reached its verdict — i.e., the jury's mental processes — and noted that Harb did not explain how they could be reconciled with Evidence Code Section 1150. Guernsey accordingly dismissed Harb's "dicta on this point [a]s unpersuasive" and reiterated that affidavits characterizing jurors' states of mind are inadmissible.

Still, Guernsey offers a ray of hope to appellants attempting to demonstrate a reasonable probability that an error at trial influenced the verdict: Guernsey held that even without the juror affidavits, the record established that the instructional error was prejudicial and required reversal.

Guernsey focused on the the jury's copy of the jury instructions, which had handwritten notations expressly linking the erroneous instruction to specific questions on the verdict form. Based on that fact alone, Guernsey concluded that "it 'seems probable'" that the erroneous instruction influenced the verdict.

Guernsey also noted three other indicators of prejudice: The erroneous instruction conflicted with another instruction; there was "significant evidence" that would have supported a more favorable outcome for the appellant; and the jury asked the court multiple questions that "suggested that it was struggling with" an issue related to the erroneous instruction. These are the types of factors that courts routinely consider when assessing whether instructional error requires reversal. They can help demonstrate prejudice without running afoul of Section 1150's limitations on juror affidavits.[13]

The bottom line: California law narrowly circumscribes the evidence from jurors that can be used to impeach a verdict. Knowing the relevant limits is critical for any trial team making, or opposing, a new trial motion, and on appeal as well.

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[1] See Grobeson v. City of Los Angeles, 190 Cal. App. 4Th 778, 786-87 (2010); Mesecher v. Cty. of San Diego, 9 Cal. App. 4th 1677, 1683-84.

[2] Cal. Code Civ. Proc. §§ 657, 658.

[3] People v. Steele, 27 Cal. 4th 1230, 1263-64 (2002).

[4] Id. at 1264.

[5] Mesecher, 9 Cal. App. 4th at 1683; see also Bell v. Bayerische Motoren Werke Aktiengesellschaft, 181 Cal.App.4th 1108, 1125-26 (2010).

[6] Maxwell v. Powers, 22 Cal. App. 4Th 1596, 1604.

[7] People v. Engstrom, 201 Cal. App. 4Th 174, 184 (2011).

[8] People v. Johnson, 222 Cal. App. 4th 486, 494 (2013).

[9] Id.

[10] Guernsey v. City of Salinas, 241 Cal. Rptr. 3d 335 (Ct.App. 2018).

[11] Cal. Const., art. VI, § 13.

[12] E.g., Soule v. Gen. Motors Corp., 8 Cal. 4th 548, 570-71 (1994).

[13] Id.

[14] Harb v. City of Bakersfield, 233 Cal. App. 4th 606 (2015).

[15] For a more comprehensive list of factors relevant to the prejudice inquiry, see Soule, 8 Cal. 4th 548, 570-71 (1994).