IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

JOSEPH D. AMRINE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	08AC-CC00340
	)	
JULIAN J. OSSMAN,	)	
	)	
Defendant.	)	

DEFENDANT'S RESPONSE

Defendant Julian Ossman herein responds to Plaintiff's motion for a new trial, stating:

Mr. Amrine seeks a new trial arguing three theories: First, that juror Griggs failed to disclose racial bias during voir dire thereby potentially infecting the verdict with racial bias; second, that the verdict might have been influenced by extrinsic concerns about the source of any payment if a verdict favoring Amrine was reached, and; third, that the verdict was against the weight of the evidence.

I. Juror Earl's Claim of Racial Bias and Juror Non-disclosure

Mr. Amrine claims that juror Griggs did not answer questions about racial bias truthfully. The only basis for that claim is juror Earl's uncorroborated statement that while reconvening after a break from

deliberations that Griggs allegedly made a statement evidencing racial bias to juror Linhardt.

Mr. Ossman strongly opposes the grant of a new trial because the evidence supporting Mr. Amrine's claim of racial bias is neither corroborated or credible. Juror Earl was one of three jurors who did not sign the verdict form. Amrine provides no corroboration of Earl's claim. Moreover, his claim is flatly denied by juror Griggs. See attached affidavit, Attachment A. And juror Linhardt who was seated across the table from Griggs attests that he never heard the statement Earl alleges or anything of the sort. See attached affidavit, Attachment B. Furthermore, while Earl alleges he heard juror Griggs make the statement he thereafter continued participating in deliberations without notifying foreperson Delk, any other jurors, the Court or any court officials.

Juror Griggs flatly denies that he used the epithet "nigger" or made any statement manifesting racial bias. See Griggs Affidavit, attached. Further, Griggs denies that he failed to honestly respond to questions regarding racial bias during voir dire. Additionally, juror Linhardt denies that he heard Griggs make the alleged comment. See Affidavit, attached.

Nonetheless, Mr. Ossman agrees that an evidentiary hearing to ascertain the truth of Mr. Amrine's claims may be warranted at the Court's discretion. See *Fleshner v. Pepose Vision Institute, P.C.*, 304 S.W.3d 81

(Mo.banc 2010). Again, Mr. Ossman opposes the grant of a new trial at this time based on nothing more than juror Earl's uncorroborated statement.

II. The Mansfield Rule Bars Plaintiff's Effort to Undermine the Jury's Verdict Based on Alleged Discussions About Potential Sources of Payment if the Jury Verdict ultimately Favored Mr. Amrine

Missouri recognizes the Mansfield rule providing that no juror may impeach a verdict, violate secrets of the jury room, tell of partiality or misconduct that occurred there, or speak to motives that induced or operated to produce the verdict. *Matlock v. St. John's Clinic, Inc.*, 368 S.W.3d 269, 271-272 (Mo.App.W.D. 2012)(app. for transfer denied). See *Travis v. Stone*, 66 S.W.3d 1, 4 (Mo.banc 2002).

Missouri courts recognize two – and only two-- exceptions to the Mansfied rule. *Matlock*, 368 S.W.3d at 271-272. Jurors may testify about ethnic or religious bias or prejudice expressed during deliberations. *Fleshner v. Pepose Vision Inst.*, 304 S.W.3d 81, 87 (Mo.banc 2010). The second Mansfield exception permits juror testimony when it is alleged that a juror independently gathered evidence. *Travis*, 66 S.W.3d at 4. There is no such allegation here and therefore neither exception is implicated regarding comments about any possible source of payments.

The second exception to the Mansfield rule extends solely to misconduct occurring outside the jury room, such as independent investigations or

communication with third persons. *State ex rel. Koster v. McElwain*, 340 S.W.3d 221, 255 (Mo.App. 2011). Here there is no claim that any juror independently gathered evidence. *Ledure v. BNSF Ry. Co.*, 351 S.W.3d 13, 23 (Mo.App. 2011); *Williams v. Daus*, 114 S.W.3d 351 (Mo.App. 2003). Lacking such evidence, any alleged comments or discussion about the payment source inhere in the verdict and fall within a forbidden field of inquiry. *Baumle v. Smit*h, 420 S.W.2d 341 (Mo. 1967).

Mr. Amrine tries to slip past *Baumle's* ruling with affidavits from three jurors attesting that comments about the possible source of payments occurred before and to a substantially lesser-degree after the Court responded to a jury question during deliberations. Amrine's attack is a bald-faced violation of the Mansfield rule that wilfully ignores long-established precedent. The affidavits of jurors Delk, Earl and Peters (Amrine exhibits 8, 9, and 10) should be stricken in their entirety, inasmuch as they violate the Mansfield rule and for which no exception applies. See *Matlock v. St. John's Clinic, Inc.*, 368 S.W.3d 269 (Mo.App. 2012).

Additionally, a new trial is not warranted simply because deliberations may have been affected based on a juror's purported personal knowledge. *Matlock*, 368 S.W.3d at 273. Evidence of such concerns is inadmissible in a verdict challenge because such statements consist of matters inherent in the verdict. *Id.* Jurors are generally entitled to use their own experience and to

draw on the common experience of mankind in forming their judgments. *Christie v. Gas Service Co.*, 347 S.W.2d 135, 144 (Mo. 1961); *Fleshner,* 304 S.W.3d at 90 (jurors encouraged to voice their common knowledge and beliefs during deliberations).

The Missouri Supreme Court faced an analogous situation in *Baumle,* a negligence claim brought against an over-the road truck driver in connection with a motor vehicle accident. There, a jury's verdict was challenged on accusations that one of the jurors formed his opinion based on his personal experiences as a truck driver. The *Baumle* Court concluded the juror's statements inhered in the verdict and fell within a forbidden field of inquiry. *Id.*

Baumle points the way in this case. Mr. Amrine attacks the verdict charging that unidentified jurors may have voiced opinions based on their personal experience suggesting that if a verdict was reached in Amrine's favor that it might be paid by the state. Amrine suggests that those comments were not matters inhering to the verdict, but in fact extraneous information injected into the deliberations. He cites no applicable case law supporting that contention or distinguinshing the principles expressed in *Baumle.*

Other Missouri cases have rejected arguments similar to Mr. Amrine's. In *Ledure,* it was claimed that two jurors provided extrinsic evidence drawn

from their personal and employment experiences. *Ledure*, 351 S.W.3d at 23. That challenge failed because there was no evidence jurors had independently gathered evidence. Amrine argues that unidentified jurors drew on their personal or employment experiences suggesting if a judgment was reached favoring Amrine that it might be paid by the state. There is no shred of evidence, no whisper, not even rank speculation that a juror stepped outside the deliberation room to obtain independent information. As in *Ledure*, the alleged comments are matters inherent in the verdict and are beyond challenge.

More recently, a verdict challenge claiming the introduction of extrinsic evidence was rejected where a juror told other jurors that the plaintiff could not be trusted based on that juror's pretrial observations of the plaintiff outside the courtroom. *Matlock*, 368 S.W.3d at 271. There was no admissible evidence supporting the juror's opinion because the plaintiff had not testified. *Id.* The court concluded that the evidence brought challenging the verdict was improper because it violated the Mansfield rule and no exception applied. *Id.* at 274.

III. The Verdict Was Not Against The Weight of the Evidence

Mr. Amrine argues that the verdict was against the weight of the evidence arguing that it is indisputable that Mr. Ossman failed to conduct a thorough, independent, and exhaustive investigation regarding prosecution

witnesses Poe, Russell or Ferguson. Both parties presented significant evidence supporting their theories about the adequacy of Mr. Ossman's investigation. Those matters were fiercely disputed and presumptively resolved through jury deliberations. The jury's verdict was not against the weight of the evidence.

Mr. Amrine points generally to a litany of examples that he contends prove conclusively that Mr. Ossman did not conduct a complete, exhaustive and independent investigation. The proof according to Amrine is limited to Ossman's trial materials and questions Ossman chose not to ask at trial. Amrine ignores Ossman's testimony that his witness outlines and similar materials were likely distilled from a larger body of investigatory materials that he reviewed and considered.

A primary flaw in Mr. Amrine's conclusion that Mr. Ossman's investigation extended no further than his trial outlines and the questions he opted not to ask is that the extent of Ossman's investigative materials remains unknown. Even Amrine's experts conceded that it was impossible to know whether the written records they reviewed (records transmitted from one set of attorneys to another without inventory or index) comprise all of the materials that were developed, reviewed or rejected by Ossman.

Mr. Amrine also ignores Ossman's testimony that it was never his practice to record every thought he considered, must less to detail strategic

and tactical decisions he chose not to pursue. Amrine also ignores that Ossman's memory about the scope of his investigation 25-years earlier, including matters he potentially considered and rejected as matters of trial strategy, are lost in time. In light of the foregoing, Amrine's professed certainty that he knows everything Ossman considered during his investigation is breathtaking. While Amrine is oblivious to those facts, it is clear the jury recognized the tattered and potentially fragmentary nature of the record Amrine relied upon.

Mr. Amrine also refuses to acknowledge Mr. Komoroski's testimony that a criminal defense attorney's investigation begins with his client's story and extends from those facts. The evidence before the jury clearly showed that Amrine obviously lied to Mr. Ossman from the outset claiming he had been playing poker with several confederates and had never left the game before the stabbing.

Relying on Mr. Amrine's story, Mr. Ossman interviewed each of the corroborating witnesses, locking down their stories, and confirming and reconfirming Amrine's tale that he had never left the poker table. But at the 1986 trial Amrine inexplicably and without warning discredited both his alibi and corroborating witnesses in the same breath when he testified that he had left the game at least once and perhaps more than once before the stabbing.

Amrine suggests that his self-contradiction had nothing to do with the jury's verdict. His contention is absurd.

Ignoring potential holes in the written records, Mr. Ossman's failed memory, and Mr. Amrine's obvious lies, his experts insist that Ossman failed to conduct a thorough, independent, and exhaustive investigation. His experts' self-serving certainty sags under the weight of what they admit cannot be authoritatively determined. Moreover those terms are words of common usage and the jury clearly rejected Amrine's experts' ivy tower interpretation requiring Ossman to question everyone about everything without any regard to what Amrine had told him or the known facts of the investigation.

Nonetheless, Mr. Amrine argues that Mr. Ossman "essentially conceded" that he had not conducted a thorough investigation. Far from it. Ossman was unable to recall whether his investigation extended into some of the areas of inquiry Amrine suggested. But a failure to recall is not an admission that something was neither considered or done.

For example, Mr. Ossman was questioned at trial about his investigation into witness Jerry Poe's medical history. Ossman could not accurately recall what he may have reviewed or considered. Hardly surprising after nearly three decades. But from those answers, Mr. Amrine eagerly concludes that Ossman never considered the information at all. That

is facile. Moreover, Amrine ignores Ossman's trial notes for Poe indicating that he had seen and considered Poe's medical history. See Trial Ex. A, p. 454, Attachment C. The reasons Ossman chose not pursue that line of impeachment remains unknown, but that decision is presumptively a matter of trial strategy. *Johnson v. State*, 333 S.W.3d 459 (Mo. 2011); *Placke v. State*, 341 S.W.3d 812 (Mo.App. 2011). It is further worth noting that Mr. Amrine failed to introduce any testimony at trial establishing that Poe's medical history would have been relevant or otherwise admissible at the 1986 trial.

Equally critical to understanding Mr. Amrine's myopic vision of what constitutes a complete and thorough investigation is the fact that many of his inventive post-conviction theories were concocted by he and his attorneys long after the 1986 trial. It is telling that none of Amrine's post-conviction theories are matters he listed in his *pro se* motion for a new trial prepared just days after his conviction. Clearly, not even Amrine thought those imaginative theories were viable in 1986.

For example, Mr. Amrine challenges that Mr. Ossman did nothing to investigate witness Randy Ferguson's homosexuality or his relationship to inmate Clifford Valentine, a supposedly high-ranking Moor (the "Moor conspiracy theory"). There was never evidence brought before this jury that an investigation into Ferguson's relationship with Valentine was warranted

before the 1986 trial; not by Amrine, not by any of the Moors who testified on Amrine's behalf or anyone else. Moreover, Ferguson himself never supported Amrine's Moor conspiracy theory even after his recantation. In fact, Ferguson's stated reason for lying (like Poe and Russell) rested solely on claims they were pressured and threatened by prosecution officials. In short, the Moor conspiracy theory is just another post-conviction invention concocted by Amrine after his conviction lacking any factual basis and floating on wisps of pure speculation.

The Moor conspiracy theory is just one example but it illustrates a hotly contested point that was forcefully argued to the jury through testimony: That the scope of Mr. Ossman's investigation must be rooted in reality, not driven by speculation or conjecture. Mr. Amrine's experts opined that Ossman's investigatory obligations were limitless, extending everywhere and to everyone who might have crossed paths with one of the recanting witnesses without any regard to the facts. The jury's verdict indicates that Amrine's experts' views about what constituted a complete, exhaustive and thorough investigation were clearly rejected.

Mr. Amrine also argues that Mr. Ossman's allegedly incomplete investigation rendered his depositions and cross-examinations ineffectual. As discussed, *supra*, the totality of Ossman's investigation can never be fully known. Amrine's self-serving assertions that Ossman's witness outlines,

opening argument and summation form the ambit of his full investigation ignores the totality of the evidence. Moreover, his argument, in sum, attempts to mount an attack based on questions that were not asked or lines of impeachment that were not pursued at trial. These attacks over what questions were or were not asked are directed at presumptive trial strategy concerns and do not form the basis for a claim of ineffective assistance. *Johnson,* 333 S.W.3d at 459; *Placke*, 341 S.W.3d at 812.

Finally, Mr. Amrine contends that as a direct result of Mr. Ossman's purported negligence that Amrine sustained damaged. He claims that expert testimony established that but for that claimed negligence that Amrine would have been acquitted. Yet Amrine produced no testimony that any question Ossman might have asked Ferguson, Poe or Russell would have caused any one of them to admit to being pressured by prosecution officials as they claim. At trial Ms. Short, one of Amrine's experts, was repeatedly asked to explain what Ossman might have asked any of those inmates that would have revealed their purported lies. Time and again Short bobbed and weaved in an effort to avoid answering a very simple question. Her evasive responses left the answer clear to the jury: she had no idea Furthermore, whle Amrine's experts boasted at trial that they surely would have convinced the jury that the real killer was Terry Russell. Neither of them provided a factual basis to bolster their boasts. Moreover, despite their self-serving

comments neither Mr. O'Brien or Short ever explained how they would have successfully rebutted the powerful testimony of guards Bowers and Dobson who unequivocally placed Russell outside the room where inmate Barber was stabbed at the time of the killing.

Mr. Amrine claims the verdict was against the weight of the evidence. But the evidence before the jury supported the jury's verdict favoring Mr. Ossman. The weight of the evidence did not demand a verdict favoring Amrine.

Conclusion

Mr. Amrine's motion for a new trial should be rejected for the reasons set forth, *supra*. Mr. Ossman reiterates that a hearing to get to the bottom of juror Earl's claims of racial bias is proper and joins with Amrine in requesting an evidentiary hearing on that narrow matter should the Court believe it is warranted.

Respectfully submitted,

CHRIS KOSTER
Attorney General

DOUG LEYSHOCK
Assistant Attorney General
Mo. Bar. No. 47912
P.O. Box 899
Jefferson City, MO 65102
Phone (573) 751-3321
Fax (573) 751-9456
E-mail: doug.leyshock@ago.mo.gov

ATTORNEYS FOR DEFENDANT
OSSMAN

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, this 8th day of January, 2013, to:

Arthur Benson
Arthur Benson & Associates
P.O. Box 119007
Kansas City, MO 64171-9007

Assistant Attorney General