
IN THE

Superior Court of Pennsylvania

Eastern District

2811 EDA 2024

PAUL GILL and DIANE GILL, Husband and Wife,
Plaintiffs-Appellees,

— v. —

SHELL OIL COMPANY, *et al.*
Appeal of: EXXON MOBIL CORPORATION,
Defendant-Appellant.

*On Appeal from the September 23, 2024 Judgment Following Jury Verdict made final
by the resolution of post-trial motions (including delay damages) September 13, 2024
and the partial discontinuance of the sole remaining party September 27, 2024,
in the Court of Common Pleas of Philadelphia County at No. 1803,
May Term, 2020, Carmella Jacquinto, Judge.*

**BRIEF OF *AMICUS CURIAE* AMERICAN TORT REFORM
ASSOCIATION IN SUPPORT OF APPELLANT**

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STATEMENT OF INTEREST OF AMICUS CURIAE

The American Tort Reform Association (“ATRA”) is a national, nonpartisan, nonprofit coalition of large and small businesses, trade associations, and professional firms. ATRA is dedicated to improving the civil justice system with a focus on promoting fairness, balance, efficiency and predictability in civil litigation. In addition to legislative efforts and public education outreach, ATRA files *amicus curiae* briefs in cases involving important civil justice issues.

Central to the American system of justice – and to the public’s perception that civil disputes will be resolved fairly – is trial by an impartial jury. Data bears this out. As ATRA observes on its website, “78% of the public rates our jury system as the fairest way to determine guilt or innocence, and 69% of those surveyed consider juries to be the most important part of the justice system.”¹ To ensure that courts can deliver on the commitment that juries will truly reflect the community from which they are

¹ *Jury Service Reform*, at <https://www.atra.org/issue/jury-service-reform/> (referencing 1998 American Bar Association public opinion survey data).

drawn, ATRA has long championed jury service reforms – such as the elimination of occupational exemptions and the establishment of lengthy trial funds to support jurors financially – so that more citizens are able to fulfill their duty to serve on juries without experiencing hardship.² When factual circumstances indicate the jury selection process has likely been manipulated to produce a biased and unrepresentative jury pool, ATRA has submitted *amicus* filings urging close scrutiny of the practices at issue and reversal where jury impartiality was compromised.³

Juror deceit in the *voir dire* process and misconduct during deliberations create grave doubts that a verdict was determined fairly. ATRA in this case sees reason to believe that a juror likely

² Id.

³ See, e.g., Amici Curiae Brief of American Tort Reform Association, *et al.*, Hyundai Motor America v. Applewhite, Case No. 2015-CA-01886, Mississippi Court of Appeals (Sept. 16, 2016), at 3 (arguing that “[a] trial outcome clouded by violations of the jury service statute should not stand” and urging the court to “consider whether the Circuit Court abused its discretion in refusing to grant Hyundai any relief or, at minimum, authorize further investigation through discovery as to whether there was improper jury contact.”). In the Applewhite case, the Mississippi Supreme Court ultimately ordered a new trial after observing that the “right to a fair trial by an impartial jury is fundamental and essential to our form of government,” but that right “is denied” and “public confidence is eroded” when evidence reveals that “improper influences are actually brought to bear on the jury.” Hyundai Motor America v. Applewhite, 319 So. 3d 987, 1002 (Miss. 2021).

brought pre-existing animosity against a party into the jury room after having failed to reveal that bias during jury selection. Acting on its role to inform the public of troubling occurrences affecting the courts, ATRA, in its 2024 – 2025 Judicial Hellholes® Report, described the signals of juror misconduct that have been uncovered:

Following the trial, information regarding one of the jurors came to light. In August, Exxon claimed it found evidence that one of the jurors was biased, pointing to statements on the juror's social media accounts stating that Exxon is responsible for climate change, Exxon is "objectively a villain," and that the juror wanted to "stick it to the man" by awarding the verdict. Despite these concerning developments, Exxon's motion for a new trial was denied.⁴

These circumstances warrant close judicial scrutiny to probe whether the integrity of the trial process had been violated, but no meaningful consideration was given by the trial court.

⁴ *Judicial Hellholes® Report 2024-25: Philadelphia Court of Common Pleas and Pennsylvania Supreme Court*, at <https://www.judicialhellholes.org/hellhole/2024-2025/philadelphia-court-of-common-pleas-and-pennsylvania-supreme-court/>.

Accordingly, ATRA respectfully submits this *amicus curiae* brief to the Court to address the public importance of these issues apart from and beyond the immediate interests of the parties to this case.

Pursuant to Pa. R.A.P. 531(b)(2), amicus states that no person or entity, other than the amicus, its members, and its counsel, paid for or authored this brief, in whole or in part.⁵

⁵ Please note that ExxonMobil is a member of ATRA but has taken no part in paying for nor drafting this brief on behalf of ATRA.

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BRIEF IN SUPPORT OF APPELLANT OF *AMICUS CURIAE*
AMERICAN TORT REFORM ASSOCIATION

I. SUMMARY OF ARGUMENT

The trial court improperly and summarily dismissed allegations and evidence that a juror was not truthful in *voir dire* and did not act impartially during deliberations. The trial court did so without conducting an evidentiary hearing into blog posts made by the juror that revealed his anti-corporate hostility and punitive intent, even though he had testified – apparently deceptively – during *voir dire* that he had no biases that would affect his ability to fairly and impartially decide the case. His blog posts also demonstrate his knowledge during deliberations of prejudicial information never presented to the jury during trial, including information about settlement negotiations between the parties.

The Supreme Court of the United States and the Supreme Court of Pennsylvania have long recognized that *voir dire* is an essential means of protecting the right to due process. Further, once a jury is empaneled, the trial court must safeguard the jury from improper influence. The trial court's duty to monitor and uphold jury impartiality does not end with the delivery of the

verdict. Fulfilling the purpose and promise of the right to due process requires that the trial court take action when faced with substantive allegations and evidence of juror partiality. The trial court here refused to do so. Appellate courts in numerous other jurisdictions have reversed judgments where a jury's verdict is tainted by juror bias or partiality. Pennsylvania's commitment to an impartial jury requires that this Court do the same in this case.

II. ARGUMENT

A. Trial courts must zealously ensure the integrity and fairness of the jury system throughout the trial process until the conclusion of the litigation or trust in the justice system will vanish.

"Due process means a jury capable and willing to decide the case solely on the evidence before it, and a trial judge ever watchful to prevent prejudicial occurrences and to determine the effect of such occurrences when they happen." Smith v. Phillips, 455 U.S. 209, 217 (1982). The Constitution "guarantees both criminal and civil litigants a right to an impartial jury" which must be vigorously protected by the trial court. Warger v. Shauers, 574 U.S. 40, 50 (2014).

The Supreme Court of the United States has “made clear that *voir dire* can be an essential means of protecting this right.” Id. The Supreme Court of Pennsylvania agrees, stating that “[w]e protect that impartiality through the *voir dire* process . . .” Shinal v. Toms, 640 Pa. 295, 310, 162 A.3d 429, 438 (2017). But *voir dire* only serves due process if jurors are candid and forthright.⁶ If jurors are dishonest during *voir dire*, defendants cannot adequately evaluate or intelligently exercise their peremptory challenges. Rosales-Lopez v. U.S., 451 U.S. 182, 188 (1981). And challenges for cause that would be justified if the juror gave truthful answers become illusory when that juror untruthfully hides his bias. Put simply, an honest exchange between the lawyers and prospective jurors is essential to a fair trial: “[w]ithout an adequate *voir dire* the trial judge’s responsibility to remove prospective jurors who

⁶ Mix v. North American Co., 209 Pa. 636, 645, 59 A. 272, 274-75 (1904) (“It has been said that the greatest object of civil government is to get twelve honest men in the jury box.”); see also Dyer v. Calderon, 151 F.3d 970, 973 (9th Cir. 1998) (“For *voir dire* to function, jurors must answer questions truthfully.”); State v. Rowell, 906 S.E.2d 554, 556 (S.C. 2024) (“Jury selection is a pivotal stage of any trial, and it is vital that jurors truthfully answer *voir dire* questions.”); In re Hitchings, 860 P.2d 466, 473 (Cal. 1993) (“Without truthful answers on *voir dire*, the unquestioned right to challenge a prospective juror for cause is rendered nugatory.”).

will not be able impartially to follow the court's instructions and evaluate the evidence cannot be fulfilled." Id.

Once an impartial jury is empaneled, the Supreme Court of the United States has held that it is the law's objective "to guard jealously the sanctity of the jury's right to operate as freely as possible from outside unauthorized intrusions purposefully made." Remmer v. United States, 350 U.S. 377, 382 (1956). As the Supreme Court of Pennsylvania first espoused in Mix v. North American Co. and has since reiterated time and time again, once a jury is in its box:

they must be kept there, hedged around not only with their own integrity, but with every precaution against evil communication which may corrupt them; and when they go to their room to deliberate upon an issue in which is involved the life, liberty or property of their fellowman, their conduct in the discharge of such solemn duty must comport with it[.]

209 Pa. 636, 645, 59 A. 272, 274-75 (1904). Accordingly, trial courts "go to great lengths to protect the sanctity of the jury." Bruckshaw v. Frankford Hosp., 619 Pa. 135, 148, 58 A.3d 102, 110 (2012). If the trial court does not take "every precaution" to shield the jury from outside influences, "confidence in the system which

is the best achievement of civilization will be lost.” Mix, 209 Pa. at 645, 59 A. at 274-75.

B. Where there is reason to believe that a juror has undermined the integrity of the trial process, due process, and justice demand that the Court investigate juror impropriety and bias at a hearing.

The Supreme Court of the United States “has long held that the remedy for allegations of juror partiality is a hearing in which the defendant has the opportunity to prove actual bias.” Smith, 455 U.S. 209 at 215. A hearing “permits counsel to probe the juror’s memory, his reasons for acting as he did, and his understanding of the consequences of his actions. A hearing also permits the trial judge to observe the juror’s demeanor under cross-examination and to evaluate his answers in light of the particular circumstances of the case.” Tanner v. U.S., 483 U.S. 107, 135 (1987) (Marshall, J., Brennan, J., Blackmun, J. & Stevens, J., concurring in part and dissenting in part) (quoting Smith v. Phillips, 455 U.S. at 222 (O’Connor, J. concurring)).

Aligning with the Supreme Court’s clear directive, appellate courts in many jurisdictions have reversed trial courts that refuse to intervene when presented with allegations of juror partiality.

See, e.g., Rowell, 906 S.E.2d at 558 (reversing trial court's decision to deny a new trial where juror withheld material information during *voir dire* and trial court refused to grant an evidentiary hearing on the juror's alleged misconduct).⁷ Pennsylvania's staunch commitment to upholding the integrity of the jury should have this Court rule no differently.

"[T]he right to a trial by an impartial jury is enshrined in the Pennsylvania Constitution." Bruckshaw, 619 Pa. at 146, 58 A.3d at 108. To that end, the Supreme Court of Pennsylvania observed in Colosimo v. Pennsylvania Elec. Co. that "[t]he impartiality and integrity of the jury are critical to the properly functioning of our system. Indeed, the jury is its keystone." 513 Pa. 155, 161, 518

⁷ See also Brioady v. State, 396 P.3d 822, 826 (Nev. 2017) (reversing trial court's decision to deny defendant's motion for a new trial, where defendant learned of a juror's intentional concealment post-trial); Marshall v. State, 664 So.2d 302, 304 (Fla. Dist. Ct. App. 1995) (reversing trial court's decision to deny motion for new trial where juror concealed prior knowledge of the defendant); In re Hitchings, 860 P.2d at 473 (vacating conviction on the basis of juror misconduct where juror intentionally concealed material information, including anti-defendant bias, during *voir dire*); McCoy v. Goldston, 652 F.2d 654, 660 (6th Cir. 1981) (reversing trial court's decision to deny post-trial relief on the basis of juror's intentional concealment of bias during *voir dire*); State v. Coy, 550 S.W.2d 940, 944 (Mo. Ct. App. 1977) (reversing conviction and remanding for new trial where juror intentionally concealed facts on *voir dire*).

A.2d 1206, 1209 (1986). In Com. v. Mosley, the Court reiterated: “The touchstone of a fair trial is the mandate, that a defendant have a panel of impartial, indifferent jurors’ available to try his cause.” 535 Pa. 549, 554, 637 A.2d 246, 248 (1993).

Here, the trial court summarily dismissed very disturbing blog posts made by a member of the jury that determined the verdict. For context, during *voir dire*, this juror professed no bias, no inability to follow the trial court’s instructions on appropriately awarding damages, no inability to be a fair juror, and claimed to know Exxon Mobil Corporation (“ExxonMobil”) as only being “like a gas company.” But in his blog posts⁸ describing his jury experience, this juror expressed that “Exxon is objectively a villain”; recounted a “wild jury” intent on arbitrarily awarding \$1.776 billion “in honor of Philadelphia”; boasted that “ultimately, we rocked their world for 725.5M”; admitted that the jury’s verdict was not to compensate Plaintiffs but rather a punishment for

⁸ See juror’s blog posts as cited in Exhibit A, Defendant Exxon Mobil Corporation’s Motion to Supplement *Nunc Pro Tunc* its Motion for Post Trial Relief with Evidence of Juror Bias, Misconduct, and Prejudicial Extraneous Information (Aug. 21, 2024).

ExxonMobil's alleged role in climate change: "Don't say I didn't ever do anything for climate change lol"; confessed his knowledge of pre-verdict settlement negotiations between the parties: "Get this, the morning before deliberations, the plaintiff[s] offered to settle the case for 1.2M. Exxon said no. They really didn't see this coming"; and celebrated getting "to be apart [sic] of sticking it to the man if you will. So I feel lucky to have done something."

ExxonMobil moved to supplement its timely motion for new trial upon learning of these blog posts. But when counsel attempted to raise the posts at the hearing on ExxonMobil's motion for new trial, the trial court refused the issue before ultimately denying ExxonMobil post-trial relief.⁹ Nearly a year later, but without conducting an evidentiary hearing, the trial court's order in support of affirming its decision to deny a new trial made a conclusory and baseless determination that the blog posts were hearsay and

⁹ In fact, when ExxonMobil's counsel began to raise the issue of the juror's posts as indicating that "the verdict had to have been the product of improper prejudice [and] bias," the trial court interrupted the argument and demanded "I want that stricken from the record because that is not why we're here." Aug. 26, 2024 Post-Trial Motions Hearing Transcript, Gill v. ExxonMobil Corp. et al., No. 200501803, at 16 -17.

“reactionary.”¹⁰ Again, without conducting an evidentiary hearing, the trial court made findings that the blog posts were “never suggesting anything improper during the trial or during deliberations, never pointing towards a violation of the juror’s oath to be fair and impartial,” and never suggesting the juror disregarded “the instructions on the law given by the trial court and rendering an inappropriate verdict.” See May 8, 2025 Trial Court Opinion, Gill v. ExxonMobil Corp. et al., No. 200501803, at 358, 360. But without an evidentiary hearing the court could not meaningfully assess the existence and extent of the juror’s bias, assess whether the juror dishonestly failed to disclose his lack of impartiality in *voir dire*, identify the point at which the juror learned about purported settlement discussions, and determine whether the jury was otherwise exposed to improper undue influence. Stated otherwise, a trial court’s cursory dismissal of these types of serious allegations and evidence without conducting an evidentiary hearing (where evidentiary and admissibility issues like hearsay or

¹⁰ This fact forecloses any notion that the issue of Juror No. 2’s blog posts is somehow “waived and not preserved for appeal.” See May 8, 2025 Trial Court Opinion, Gill v. ExxonMobil Corp. et al., No. 200501803, at 357.

authenticity could be addressed) violates a party's due process rights to an impartial jury.

If a juror concealing his opinion that the defendant is "objectively a villain" and confessing to knowledge of pre-verdict settlement negotiations is not sufficient to at least warrant an evidentiary hearing on juror partiality, it is hard to fathom what is. This Court should reverse.

III. CONCLUSION

The partiality and bias of even one juror are grounds for considering a trial unconstitutional. Parker v. Gladden, 385 U.S. 363, 366 (1966). Here, the trial court's summary dismissal of serious allegations and evidence of juror partiality as "never suggesting anything improper" – without conducting an evidentiary hearing – violates ExxonMobil's due process rights. Accordingly, the Court should reverse the trial court's decision to deny ExxonMobil's motion for a new trial and, at minimum, remand for an evidentiary hearing on juror partiality.

COMBINED CERTIFICATES OF COMPLIANCE AND SERVICE

I hereby certify that the foregoing brief complies with the word limit of Pennsylvania Rule of Appellate Procedure 531(b)(3). Specifically, it contains 2084 words based on the word count function of Microsoft Word, the word processing system used to prepare this brief.

I further certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information.

I additionally certify that on June 23, 2025, I caused true and correct copies of the foregoing Brief in Support of Appellant of *Amicus Curiae* American Tort Reform Association to be electronically served on all parties listed in this Court's docket.

Dated: June 23, 2025

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DOCKET NO 2811 EDA 2024

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v.

Shell Oil Company, Berryman Products, Inc., Univar USA, Inc.,
Ashland, LLC, Brenntag Southwest, Union Oil Company of
California,
Blaster Corporation, Illinois Tool Works, Inc., Henkel Corporation,
Root Oil Company, Exxon Mobil Corporation, United States Steel
Corporation, Radiator Specialty Company, Atlantic Richfield
Company,
CRC Industries, Inc., Sunoco, LLC (R&M) Sun Company, Safety-
Kleen Systems, Inc.

Appeal of: Exxon Mobil Corporation

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I, Elissa Diaz, swear under the pain and penalty of perjury,
that according to law and being over the age of 18, upon my oath
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Sworn to before me on June 23, 2025

/s/ Robyn Cocho

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