IN THE SUPREME COURT OF TEXAS

NO. 06-0875

FORD MOTOR COMPANY, PETITIONER,

v.

EZEQUIEL CASTILLO, ET AL., RESPONDENTS

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE THIRTEENTH DISTRICT OF TEXAS

Argued February 5, 2008

JUSTICE WAINWRIGHT, concurring, joined by JUSTICE MEDINA.

I join the Court's opinion and write separately to highlight an additional reason supporting the decision and to emphasize the limited circumstances in which I believe the Court's opinion authorizes targeted discovery related to the actions of jurors.

In this case, Ford Motor Company and Castillo were prompted to settle their products liability lawsuit by a note from the jury room to the trial judge asking: "What is the maximum amount that can be awarded?" The judge and the parties subsequently learned that the note did not come from the *jury*, but rather appears to have come from a *juror,* before Ford had been found liable in the jury's deliberations. The damages question was conditioned on a liability finding, and the jury would not have had to discuss damages unless it found Ford liable. There is evidence that the

presiding juror either did not tell some jurors about the note or ignored objections of other jurors prior to sending it to the judge. There are two potential reasons for the presiding juror's action. One potential reason is the juror had an agenda, possibly prompted or guided by outside agents, and attempted to influence the result in the case improperly. The other is that a well-meaning juror sought to have her question answered during deliberations, albeit without the permission of the rest of the jury. The concrete risk that the first possibility motivated the question from the jury room is the reason the Court allows discovery in this case.

The parties, their attorneys, and the trial court reasonably assumed that the note signed by the presiding juror was not coming from a single juror, but rather the jury as a whole. Rule 285 of the Texas Rules of Civil Procedure[1] provides that the jury may communicate with the court verbally or in writing through the presiding juror. However, neither Rule 285 nor other procedural rules set the parameters for when questions may be sent by the jury to the judge. And the rules of procedure do not require that all jurors be aware that a juror submitted a question to the court. The participants in trials in Texas courts presume, and reasonably expect, that a note coming from the jury room represents the concerns (if not the opinions) of at least a majority of jurors. *See* Tex. R. Civ. P. 285 (permitting communications between "the jury" and the court "either verbally or in writing"). Other jurisdictions provide more guidance. *See, e.g.*, KEVIN F. O'MALLEY, JAY E. GRENIG, & HON.

[1] Texas Rule of Civil Procedure 285 provides:

> The jury may communicate with the court by making their wish known to the officer in charge, who shall inform the court, and they may then in open court, and through their presiding juror, communicate with the court, either verbally or in writing. If the communication is to request further instructions, Rule 286 [relating to the procedure for providing the jury with further instruction "touching any matter of law"] shall be followed.

WILLIAM C. LEE, Federal Jury Practice and Instructions § 103.50 (6th ed. 2006) ("[I]f you need to communicate with me during your deliberations, you may send a note to me through the marshal or bailiff, signed by one or more jurors.").[2]

The Court should set parameters for when the jury may send questions to the judge about the case during deliberations.[3] The rules of procedure and the instructions to the jury should be amended to specify that only the jury can send questions about the deliberations to the judge during deliberations. At a minimum, the entire jury should know that a question about deliberations is being sent to the judge. This will preclude an individual juror or a group of jurors from sending a question to the judge under circumstances that suggest, as in this case, that the question was from the jury.

When improper outside influence is exerted on a juror, or a juror tries to manipulate the outcome of a dispute, both parties are misled, and the integrity of the jury trial is subverted. The Texas Constitution, the Government Code, the Rules of Civil Procedure, and our case law all recognize that the parties to a civil case have a right to a fair trial, including an impartial and untainted jury. *Golden Eagle Archery, Inc. v. Jackson*, 24 S.W.3d 362, 374 (Tex. 2000) (discussing "guarantees of the right to a fair and impartial jury trial in Article I, Section 15 and Article V, Section

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[2] *Accord* 1ST CIR. PATTERN CRIM. JURY INSTR. (1997); 7TH CIR. FED. JURY INSTR.—CIVIL 1.33 (2008); 8TH CIR. CIV. JURY INSTR. 3.06 (2005); 9TH CIR. CIV. JURY INSTR. 3.2 (2007) (all providing instructions for jury notes, requiring that each note be signed by one or more jurors); *see also* 10TH CIR. CRIM. PATTERN JURY INSTR. 1.43 (2005) ("If you [the jury] want to communicate with me at any time during your deliberations, please write down your message or question and give it to . . . [the bailiff] . . . , who will bring it to my attention.").

[3] This is not to suggest that individual jurors cannot communicate with the judge about other important matters, such as a single parent advising the judge that she received a call from a school nurse to tell her that her daughter is very sick.

10 of the Texas Constitution"); TEX. CONST. art. I § 15 ("The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to . . . maintain its purity and efficiency."); Tex. Gov't Code § 62.105(4) (disqualifying from jury service any person who "has a bias or prejudice in favor of or against a party in the case"); Tex. R. Civ. P. 327(a) (providing for a new trial when jury misconduct exists); *see also Hyundai Motor Co. v. Vasquez*, 189 S.W.3d 743, 749 (Tex. 2006) (recognizing the constitutional right to a trial by a "fair and impartial jury"); *id.* at 768 (Medina, J., dissenting) (noting that an "improperly impaneled jury is also akin to the denial of one"); *Tex. Employers' Ins. Ass'n v. McCaslin*, 317 S.W.2d 916, 919 (Tex. 1958) (noting that juror bias and misconduct "have never been regarded lightly by the Texas courts"). The fact that the parties in this case attempted to settle before the jury returned a verdict does not dilute their substantive right to a pure and efficient jury.

Just as this Court cannot allow to stand a favorable verdict obtained by one party due to possible jury misconduct, *e.g.*, *Tex. Employers' Ins. Ass'n*, 317 S.W.2d at 918, it should not enforce a settlement agreement if it is prompted by impermissible outside influence on a jury member. The rule we pronounce today is necessary for the integrity of trial by jury and crucial for litigants to trust in the twelve individuals empaneled as the triers of fact. Castillo would have been entitled to the same limited discovery if he had entered into a meager settlement following the reading of a juror note, potentially prompted by improper influence, asking, "What is the minimum amount of damages we can award?" Both plaintiffs and defendants rely upon a jury system devoid of outside influence and manipulation. *See id.* at 920 (noting that when a juror has been subjected to improper influence, it is "often impossible for that juror to maintain an impartial attitude between the litigating parties.

And this is true whether the juror is prejudiced in favor of or against the party guilty of the improper act.").

The discovery permitted by the Court in such situations is proper, but it is limited. Questions from the jury room are not definite declarations of where the jury stands in its deliberations. In fact, many jury instructions caution the jurors not to communicate how their votes stand numerically. *See, e.g.*, 10TH CIR. CRIM. PATTERN JURY INSTR. 1.43 ("I caution you, however, that with any message or question you might send, you should not tell me any details of your deliberations or indicate how many of you are voting in a particular way on any issue."); *accord* 8TH CIR. CIV. JURY INSTR. 3.06; O'MALLEY, § 103.50 (similarly warning jurors not to disclose votes in written questions). If the parties merely misread an implied message from a jury note, settle based on that note, and later discover that the jury may have come out the other way had it been allowed to reach a verdict, there is no automatic claim for recision of the settlement contract on mutual mistake grounds, and it remains difficult for the doors to the jury room to be opened for discovery of impropriety or external influence. But when there is specific evidence to suggest that a juror may have been improperly influenced by outside agents, the integrity of the jury trial process requires that the adversely affected parties be entitled to targeted formal discovery to investigate the alleged misconduct. The discovery in this case may show no such improper external influence, but under the circumstances presented, I agree that the trial court should prudently and cautiously tailor discovery to protect one of the important guarantors of our constitutional liberties—the jury.

Dale Wainwright
Justice

OPINION DELIVERED: April 3, 2009