Alabama Rules of Evidence

Article VI. Witnesses

Rule 606.

Competency of juror as witness.

(a) *At the trial.* A member of the jury may not testify as a witness before that jury in the trial of the case in which the juror is sitting. If the juror is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

(b) *Inquiry into validity of verdict or indictment.* Upon an inquiry into the validity of a verdict or indictment, a juror may not testify in impeachment of the verdict or indictment as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes. Nothing herein precludes a juror from testifying in support of a verdict or indictment.

Advisory Committee's Notes

Section (a). At the trial. Like its counterpart under the Federal Rules of Evidence, this provision disqualifies a juror from taking the witness stand during the trial of the case in which he or she is sitting. While the opposing party must object to the calling of such a juror as a witness, an opportunity shall be provided for the objection to be made outside the jury's presence. Rule 606(a) supersedes Ala. Code 1975, § 12-16-7 (insofar as it is interpreted as rendering jurors qualified to be witnesses during the trials in which they sit). Nothing in this rule is intended to relieve jurors of their duty to acknowledge and declare personal knowledge regarding any fact in controversy.

Section (b). Inquiry into validity of verdict or indictment. This rule leaves unchanged Alabama's historic "anti-impeachment" rule. It precludes jurors, when called as witnesses to attack or impeach their own verdict or indictment but not when called to support their verdict or indictment, from testifying to (1) any matter or statement arising during the deliberations of the jury, (2) anything upon their or any juror's mind or emotions that may have been influential in assenting to or dissenting from the verdict or indictment, or (3) their own mental processes through which they arrived at the verdict or indictment. Preexisting Alabama law has long embraced the general rule that a jury's verdict may not be impeached by the testimony of the jurors regarding matters that transpired during the deliberations. See, e.g., *Carpenter v. State*, 400 So.2d 417 (Ala.Crim.App.), cert. denied, 400 So.2d 427 (Ala.1981);

Fox v. State, 49 Ala.App. 204, 269 So.2d 917 (1972). Prohibited testimony includes testimony of the mental operations or mental processes of the jurors that caused them to agree or disagree with the verdict. *Harrison v. Baker*, 260 Ala. 488, 71 So.2d 284 (1954); *Clemons v. State*, 17 Ala.App. 533, 86 So. 177, cert. denied, 204 Ala. 697, 86 So. 926 (1920).

This juror-witness preclusion is not absolute. A juror may testify regarding (1) any extraneous, prejudicial information that was brought improperly to the attention of the jury or (2) any outside influence brought to bear upon any juror. This exception to the general rule of preclusion is consistent with preexisting Alabama law, under which jurors are permitted to testify regarding extraneous facts and influences. See, e.g., *Nichols v. Seaboard Coastline Ry*., 341 So.2d 671 (Ala.1977); *Alabama Fuel & Iron Co. v. Rice*, 187 Ala. 458, 65 So. 402 (1914).

Many federal courts have interpreted Fed.R.Evid. 606(b) to allow jurors to testify as to the purely objective facts about the extraneous information or outside influence, but not about how the information was or was not considered. That is, those courts have not allowed jurors to testify about whether or not the extraneous information or outside influence affected the verdict of any juror or the jury as a whole. In those courts the judge must decide, based only on the objective facts, whether probable prejudice occurred. See, e.g., 3 J. Weinstein & M. Berger, Weinstein's Evidence ¶ 606[05] (1990); C. Mueller & L. Kirkpatrick, 3 Federal Evidence § 254 (2d ed. 1994); *United States v. Howard*, 506 F.2d 865 (5th Cir.1975). This rule is not intended as an adoption of the interpretation given by those federal courts. The committee intends this rule not to alter preexisting Alabama law on this issue, which is to the effect that jurors are not limited to testifying merely that extraneous information was brought before them but also may testify as to whether they were influenced by the extraneous information. *Whitten v. Allstate Ins. Co*., 447 So.2d 655 (Ala.1984). Of course, jurors' testimony about the effect on them and their deliberations is not controlling; the trial judge may consider other factors in determining whether prejudice occurred. See *United States v. Bollinger*, 837 F.2d 436, 440 (11th Cir.1988).

A juror's knowledge, as to the precluded matters, is equally inadmissible whether in the form of the juror's own testimony, an affidavit, or evidence of the juror's statements regarding the precluded matters. This is consistent with previously established Alabama law. *Dumas v. Dumas Bros. Mfg. Co*., 330 So.2d 426 (Ala.1976). See Ala.R.Civ.P. 59(c) (dealing with affidavits in support of a motion for new trial).

As expressed in the advisory committee's note to Fed.R.Evid. 606(b): "The values sought to be promoted by excluding the evidence include freedom of deliberation, stability and finality of verdicts, and protection of jurors against annoyance and embarrassment." See *McDonald v. Pless*, 238 U.S. 264 (1915).

This rule deals only with the qualification of jurors to testify to the grounds for attacking jury verdicts; specification of those grounds is left to preexisting Alabama law. See Ala. Code 1975, § 12-13-11(a)(2) (establishing jury misconduct as a ground for granting a motion for new trial in a civil case); Ala. Code 1975, § 15-17-5(a)(2) (establishing jury misconduct as a ground for granting a motion for new trial in a criminal case).

Any juror testimony regarding a quotient verdict, falling within the exclusionary provision of Rule 606, would be inadmissible. See Fed.R.Evid. 606(b) advisory committee's note; *Ryan*

v. Arneson, 422 N.W.2d 491 (Iowa 1988); *Sims' Crane Serv. v. Ideal Steel Prods., Inc*., 800 F.2d 1553 (11th Cir.1986); *McDonald v. Pless*, 238 U.S. 264 (1915). Once admissible evidence of a quotient verdict has been offered, however, the opposing party may call jurors to testify in support of the verdict. See *Warner v. Elliot*, 573 So.2d 275 (Ala.1990) (characterizing Fed.R.Evid. 606(b) as broader than the corresponding Alabama rule in that, under the former, juror testimony and affidavits are inadmissible if offered either to impeach or to support the verdict); *Fortson v. Hester*, 252 Ala. 143, 39 So.2d 649 (1949) (historic Alabama law precluding admission of juror testimony attacking verdict as by quotient but allowing juror testimony in support of the verdict as not having been by quotient). Compare *Warner v. Elliot,* 573 So.2d 275 (Ala.1990); C. Gamble, McElroy's Alabama Evidence § 94.06(7) (4th ed. 1991). Pieces of paper or other material found in the jury room and upon which jurors have written numbers, offered as evidence of a quotient verdict, shall be admissible as under historic Alabama law.

Rule 606(b) applies to inquiries into the validity of indictments as well as verdicts from jury trials.