

New Trial Ordered Due to Juror's Internet Research: Maryland Court of Special Appeals

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In *Wardlaw v. State*, 971 A.2d 331 (Md. Ct. Spec. App. 2009), a criminal defendant was tried before a Baltimore jury on multiple counts of various sexual offenses, including sexual child abuse and incest. The defendant was convicted of three counts of assault in the second degree, but the jury deadlocked on the charges of sexual child abuse and incest.

At trial, a therapeutic behavioral specialist testified that the victim, who was the defendant's minor daughter, had told her about the assaults. The behavioral specialist testified that she had been working with the victim on other behavioral issues at the time, including oppositional defiant disorder ("ODD"). No witnesses provided testimony regarding the nature of ODD.

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On the second day of jury deliberations, the court received two notes from the jury. One note stated: "One juror indicated at the beginning of our deliberations that she researched ODD on line [sic] Wednesday evening and found that lying was a part of the illness. I am concerned that her statement is an undue influence on the rest of the jurors. Was this okay?" *Id.* at 334. The second note, on the same piece of paper but in different handwriting, stated: "And the foreman needs to know is lying a part of the illness." *Id.* The trial court read the notes to counsel, and defense counsel moved for a mistrial. The motion was denied, and the trial court admonished the jury that "any investigation by any of you of this case

on your own whether it's on the internet or in any other way is not appropriate, it is not proper, and it is not to be considered by you in any way shape or form in the course of your deliberations." *Id.*

Later, the State attempted to join the defendant's motion for mistrial. The trial court indicated that the time to join the motion had passed, but that the State could make its own motion and the trial court asked the defense whether it wanted to join the State's motion. Defense counsel initially refused, stating "[n]o, I don't actually think that it hurts me." *Id.* at 336. Later, while the jury was still deliberating, the defense again moved for a mistrial, and the State joined the motion.

On appeal, the defendant argued that the trial court abused its discretion in denying the defense's motion for a mistrial. Maryland's Court of Special Appeals found that the juror's acts of researching ODD and then sharing her findings with other jurors "constituted egregious misconduct." *Id.* at 338. The Court of Special Appeals went on to state, "[g]iven the fact that this misconduct came to light while the jury was still deliberating, and was presumptively prejudicial to either the State or appellant, it was incumbent upon the trial court to *voir dire* the jurors to determine whether they could still render an impartial verdict based solely on the evidence presented at trial [A] specific inquiry into the thought processes of the jury was the only method of ascertaining whether the information about ODD, acquired through the juror's internet research, improperly and irreparably influenced the jury's deliberative process to the prejudice of appellant or the State." *Id.* at 338 - 339. Accordingly, the Court of Special Appeals held that "[b]ecause the trial court did not *voir dire* the jury . . . the presumption of prejudice was not rebutted" and "the trial court abused its discretion in denying appellant's motion for mistrial." *Id.* at 339.