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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

ASHLEY CRAIG BARNER,

Defendant and Appellant.

B277839

(Los Angeles County
Super. Ct. No. BA442619)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael Abzug, Judge. Affirmed.

Janet Gusdorff, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, and Stacy S. Schwartz, Deputy Attorney General, for Plaintiff and Respondent.

* * * * *

Defendant Ashley Craig Barner was convicted of assault with a deadly weapon. Subsequently, a person who identified himself as Juror No. 35 reported that another juror had used a cell phone during jury deliberations. Defendant petitioned for disclosure of Juror No. 35's identifying information. The court denied defendant's petition, finding that the petition was deficient as a matter of law because defendant had not made a prima facie showing of good cause to disclose the juror's identifying information.

On appeal, defendant claims that the court abused its discretion by denying him a hearing. We hold that the trial court did not abuse its discretion, because the allegation that a juror used a cell phone, standing alone, did not support a reasonable belief that jury misconduct occurred. We affirm the judgment.

FACTUAL BACKGROUND

On December 30, 2015, at around 9:50 p.m., defendant approached Merced Carlin, who was waiting for the bus at a bus stop. Defendant said, "I want my shit," and pointed a sawed-off shotgun at Carlin. Carlin, who was afraid, ran to a liquor store across the street. Defendant chased after Carlin. Carlin entered the liquor store, and a few minutes later, defendant entered with the gun in his jacket. Defendant approached Carlin, but somebody in the store stopped and took defendant outside by force.

Carlin called 911 from the store while defendant was outside of the store. A few minutes later, police found and arrested defendant who was sitting on the porch of a house near the liquor store. Defendant had a gun. A police officer later observed defendant in a security video. Defendant's right arm was rigid and his jacket was protruding.

PROCEDURAL BACKGROUND

Defendant was charged with attempted second degree robbery and assault with a firearm. The trial court admonished jurors to stay off the Internet. Jurors found defendant guilty of assault with a firearm, and not guilty of attempted second degree robbery.

Four days after the jury returned the verdict, a person called the court and reported that he saw another juror use a cell phone during the jury deliberations. The caller identified himself as Juror No. 35 and promised to write a letter to the court describing the cell phone use. The caller did not report that the juror had used the cell phone for any purpose related to the trial. The court never received the juror's promised letter. The court informed both parties that Juror No. 35 had reported the incident, but the juror had not followed up with any written documentation. Defendant then filed a petition to disclose Juror No. 35's identifying information.

The court denied defendant's petition because it failed to establish a prima facie showing of good cause for the release of the juror's identifying information. The court reasoned that "[t]he unsworn allegation that may have been made by one of the jurors does not establish a probability that the verdict was improperly influenced."

The court sentenced defendant to prison for a total term of 39 years to life. This appeal followed.

DISCUSSION

Defendant contends that the trial court abused its discretion by finding that he did not make a prima facie showing of good cause for release of Juror No. 35's identifying information. According to defendant, he showed good cause because Juror

No. 35's account suggested that Juror No. 35 could produce evidence of juror misconduct. As we shall explain, we disagree.

Under Code of Civil Procedure section 237,¹ all personal identifying information (names, addresses, and telephone numbers) of jurors sitting on criminal cases shall be sealed upon the recording of a jury's verdict. (§ 237, subd. (a)(2).)² A person wishing access to that information may petition the court for release of the information, and must support that petition by a declaration that includes facts sufficient to establish good cause for the release. (*Id.*, subd. (b).)³ "The court shall set the matter

¹ All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

² Section 237, subdivision (a)(2) provides: "Upon the recording of a jury's verdict in a criminal jury proceeding, the court's record of personal juror identifying information of trial jurors, as defined in Section 194, consisting of names, addresses, and telephone numbers, shall be sealed until further order of the court as provided by this section."

³ Section 237, subdivision (b) provides: "Any person may petition the court for access to these records. The petition shall be supported by a declaration that includes facts sufficient to establish good cause for the release of the juror's personal identifying information. The court shall set the matter for hearing if the petition and supporting declaration establish a prima facie showing of good cause for the release of the personal juror identifying information, but shall not set the matter for hearing if there is a showing on the record of facts that establish a compelling interest against disclosure. A compelling interest includes, but is not limited to, protecting jurors from threats or danger of physical harm. If the court does not set the matter for hearing, the court shall by minute order set forth the reasons and make express findings either of a lack of a prima facie showing of

for hearing if the petition and supporting declaration establish a prima facie showing of good cause for the release of the personal juror identifying information, but shall not set the matter for hearing if there is a showing on the record of facts that establish a compelling interest against disclosure.” (*Ibid.*)

The trial court’s determination of whether to hold a hearing on a petition to disclose juror identifying information is reviewed under an abuse of discretion standard. (*People v. Cook* (2015) 236 Cal.App.4th 341, 346; *People v. Santos* (2007) 147 Cal.App.4th 965, 978.) The trial court is not required to hold a hearing if the facts presented by petitioner are not sufficient to establish a prima facie showing of good cause for release of the information. (§ 237, subd. (b).) “‘Good cause, in the context of a petition for disclosure to support a motion for a new trial based on juror misconduct, requires “a sufficient showing to support a reasonable belief that jury misconduct occurred” ’” (*People v. Johnson* (2015) 242 Cal.App.4th 1155, 1161-1162; see *People v. Cook*, *supra*, at p. 345.) “Absent a showing of good cause for the release of the information, the public interest in the integrity of the jury system and the jurors’ right to privacy outweighs the defendant’s interest in disclosure.” (*People v. McNally* (2015) 236 Cal.App.4th 1419, 1430.) Therefore, in order to be entitled to evidentiary hearing, defendant must show specific facts, which, if established, support a reasonable belief that jury misconduct occurred. Jury misconduct occurs when a juror receives evidence outside of court. (Pen. Code, § 1181, subd. (2).)

Turning to this case, there was no abuse of discretion in the court’s summary denial of defendant’s petition. The allegation

good cause or the presence of a compelling interest against disclosure.”

that another juror used her cell phone, even if established, does not reasonably support the conclusion that a jury improperly considered outside information about the case.⁴ Although Juror No. 35 reported that another juror “used” her cell phone, Juror No. 35 did not report that the other juror used the Internet, discussed any subject connected with the trial over the phone, used the dictionary, or received any outside information. There was no evidence the juror used the phone in any manner connected with defendant’s criminal proceeding. Therefore, there was no basis to conclude that the juror used her cell phone for an improper purpose. Juror No. 35’s report did not suggest misconduct occurred or even may have occurred and defendant’s petition was basically a fishing expedition in search of misconduct. In short, defendant failed to satisfy defendant’s burden to establish a prima facie showing of good cause to disclose juror information.⁵ (See, e.g., *People v. Jefflo* (1998) 63

⁴ The jury had been instructed “[to] stay off the Internet,” and “[to] not talk amongst [them]selves or with anyone else on any subject connected with the trial, except when all the following conditions exi[s]t: [¶] the case is submitted to [them] for [their] decision by the court, following arguments of counsel and the jury instructions; [¶] [they]’re discussing the case with fellow jurors, and; [¶] all 12 jurors and no other persons are present in the jury room.” Also, the court instructed the jury “[to] not communicate using: Twitter, Facebook, or Snapchat during [their] deliberations,” and not to look up the dictionary.

⁵ Defendant also cites section 206, but fails to show that it requires a different result. Section 206, subdivision (g) provides: “Pursuant to Section 237, a defendant or defendant’s counsel may, following the recording of a jury’s verdict in a criminal proceeding, petition the court for access to personal juror identifying information within the court’s records necessary for the

Cal.App.4th 1314, 1318-1319 [no good cause for identifying information when defendant's girlfriend reported that she spoke to a juror and defendant wanted to investigate whether the juror spoke to nonjurors about case]; see also *People v. Cook, supra*, 236 Cal.App.4th at p. 346 ["Good cause does not exist where the allegations of jury misconduct are speculative, conclusory, vague, or unsupported."].)

DISPOSITION

The court's decision summarily denying defendant's petition to disclose Juror No. 35's identifying information is affirmed.

FLIER, Acting P. J.

WE CONCUR:

GRIMES, J.

SORTINO, J.*

defendant to communicate with jurors for the purpose of developing a motion for new trial or any other lawful purpose. This information consists of jurors' names, addresses, and telephone numbers. The court shall consider all requests for personal juror identifying information pursuant to Section 237."

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.