Filed 11/13/17 Ochotorena v. Cal. Dept. of State Hospitals CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

JANET OCHOTORENA, Plaintiff and Appellant, v. CALIFORNIA DEPARTMENT OF STATE HOSPITALS et al., Defendants and Respondents.	2d Civ. No. B275368 (Super. Ct. No. 14CVP-0252) (San Luis Obispo County)

Plaintiff Janet Ochotorena sued defendants California Department of State Hospitals (DSH) and Alfred Sweet for gender harassment and retaliation arising out of her employment at Atascadero State Hospital (ASH). The jury trial, which was conducted over a five-week period, resulted in a 9-3 verdict in favor of defendants.

Plaintiff moved for a new trial alleging juror misconduct. She produced declarations from three jurors purporting to evidence misconduct by Jurors Charles Roberts, Debra Roberts

and Kerri Rosenblum.[1] DSH submitted counter-declarations from Charles Roberts, Debra Roberts, Rosenblum and three other jurors. The trial court concluded that "most of the issues raised by [p]laintiff simply relate to juror deliberations with give and take on part of the jurors." The court did find, however, that Rosenblum committed juror misconduct by failing to disclose her prior knowledge of Dr. Jeffrey Friedman, one of plaintiff's experts on damages. The court determined the misconduct was non-prejudicial and denied the new trial motion. We affirm.

FACTS AND PROCEDURAL HISTORY

Plaintiff started working as a registered nurse for DSH in 2008. She primarily worked on Unit 12 at ASH, where new patients are admitted to be evaluated and stabilized before being assigned to a treatment unit. Sweet became plaintiff's shift lead on Unit 12 in October 2012.

Sweet's management style was controversial. Many employees viewed him as uncollaborative and unwilling to listen to suggestions from staff. Plaintiff sent three e-mails to Sweet's supervisor, Chris Smith, complaining about Sweet's behavior.

On October 16, 2012, Smith met with Sweet to address plaintiff's concerns. Thereafter, plaintiff suggested to Smith by e-mail that Sweet "might . . . just [need] to get used to routine." Plaintiff's coworkers also believed Sweet lacked management skills and needed more training as a supervisor. James Clark, a former acting shift lead on Unit 12, offered suggestions to Sweet, only to learn that Sweet did not take criticism well.

On November 7, 2012, plaintiff told Smith in an e-mail that she also believed Sweet "needs more training" and asked "[w]here

[1] Charles Roberts and Debra Roberts are not related.

has he been a lead? I don't think he has any idea how to run any unit let alone an admit unit." A few days later, plaintiff sent another e-mail to Smith stating that she "tried to tell [Sweet] how we do some things on 12 but he tells me I don't know what I'm talking about." Plaintiff also complained that Sweet said that the "'last woman to mess with me'" had been removed from the unit. Plaintiff further stated that she felt endangered after Sweet had left her alone on the unit.

On December 20, 2012, another nurse reported that Sweet had made an inappropriate comment the previous day. Plaintiff reported that Sweet had asked a male patient if he needed to "take a shit." Plaintiff also told Smith that Sweet had inappropriately made a joke referring to her as a "bitch." In addition, plaintiff reiterated that Sweet "is very unapproachable regarding any suggestions on how to run the unit or anything that we regularly do on this unit."

On December 21, 2012, Smith delivered a letter to Sweet advising him to "cease and desist from all behavior, which is discourteous, unprofessional, disruptive, offensive, and/or not required as part of the performance of your duties." Smith also notified his supervisors, who reported the "B word" joke to DSH's Equal Employment Opportunity (EEO) office. As a result, ASH issued Sweet two written counseling letters for unprofessional behavior. Sweet voluntarily demoted himself and transferred to Unit 18.

Plaintiff submitted a written EEO complaint to DSH. She reported that Sweet was making "a lot of sexist comments against women," and that he would stare at her when she was in the dayroom providing coverage. Plaintiff complained that Sweet's "treatment of the female staff is distinctly different

[than] his treatment toward the male staff." Plaintiff told the assigned investigator, Adam Shoor, that Sweet called her a bitch on her birthday. Plaintiff did not tell Shoor that Sweet called her a bitch multiple times or had ever used the words "'pussy popping.'"

At plaintiff's request, she was moved out of Unit 12 and onto Unit 20. Plaintiff originally had "asked to be moved to change from an admit unit but then was trying to get off of [U]nit 12 to further avoid [a hostile work] environment." Plaintiff's new unit was about a quarter of a mile away from Sweet's unit. They did not work together again.

On May 27, 2013, Sweet and plaintiff saw each other in the sally port, which is the entrance used by ASH's 2,000 employees. Plaintiff claimed that Sweet bumped against her and laughed, but the ASH police officer on duty, Matthew Fauset, did not observe anything unusual between Sweet and plaintiff.

On May 30, 2013, Shoor reported, based on his EEO investigation, that "it appears that most of the allegations against Mr. Sweet will be substantiated." Shoor observed that Sweet was "more demanding of women than men," was "generally disrespectful to the female staff," and "was more patriarchal," noting that two other women, but no men, complained of Sweet being "controlling and demanding." In July, Shoor told his supervisor, James Perez, that there was evidence to substantiate at least some of plaintiff's claims. Perez agreed, stating "I believe we can make a case of gender discrimination."

On May 30, 2013, plaintiff went on leave and never returned to work at ASH. DSH never disciplined plaintiff, reduced her salary, suspended her or demoted her. Plaintiff's

supervisors previously had evaluated plaintiff as a good employee who met or exceeded expectations.

Plaintiff filed a charge with the Department of Fair Employment and Housing. A year later, she applied for disability retirement. Her disability application stated that she suffered from post traumatic stress disorder (PTSD) as a result of working at ASH. She claimed she was a "[w]itness to attempted murder, threatened by inmate, threatened by gang member regarding being witness in court for the attempted murder." Plaintiff did not mention Sweet as the cause of her PTSD.

Plaintiff also filed the instant action against defendants alleging gender harassment, retaliation and failure to prevent harassment and retaliation under the Fair Employment Housing Act. At trial, the parties presented the jury with two contrasting views of the workplace. Plaintiff argued that Sweet harassed her because she is a woman, while defendants contended that Sweet was an untrained manager who exercised bad judgment and poorly managed both the male and female employees on Unit 12. Defendants also argued that plaintiff had exaggerated her claims. Following two days of deliberations, nine jurors found in favor of defendants on plaintiff's gender harassment and retaliation claims. Because the jury found no merit to those claims, the jury did not reach the claim for failure to prevent harassment and retaliation. Judgment was entered for defendants.

Plaintiff moved for a new trial. Plaintiff presented declarations from three jurors, Noel Granada, Nicole Holst and June Patenaude,[2] to support her assertion that Presiding Juror

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[2] These declarations are from the three jurors who disagreed with the verdict.

Charles Roberts and Jurors Debra Roberts and Rosenbaum had committed prejudicial jury misconduct. Plaintiff argued, based on statements made by Charles Roberts at the outset of deliberations, that the jury "refused to answer even the first question in favor of [p]laintiff in part out of a desire to protect the state budget for other causes, such as building a local desalination plant." Plaintiff asserted that Charles Roberts "deliberately hid his inherent bias" by lying during voir dire to prevent any challenges. She also claimed that Debra Roberts "lied during voir dire and introduced outside evidence about the way the state disciplines [its] employees." Finally, plaintiff alleged that Rosenblum brought in outside evidence of her own feelings regarding the lack of credibility of Dr. Friedman, one of plaintiff's damages experts.

DSH submitted counter-declarations from Charles Roberts, Debra Roberts, Rosenbaum and three other jurors, Fawn Portugal Gault, Robert Allen Millar and Lane O'Reilly. After reviewing the declarations, the trial court found that "most of the issues raised by [p]laintiff [regarding the Robertses] simply relate to juror deliberations with give and take on the part of the jurors. As such, the Court does not conclude that there is sufficient evidence to support a finding of juror misconduct in those instances."[3]

With respect to Rosenblum, the trial court found that she had made statements to jurors that she had "possibly known of Dr. Friedman from prior experience and questioned his credibility." The court further found that Rosenblum did not

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[3] Pursuant to Evidence Code section 1150, the trial court disregarded "[e]vidence [in the declarations] that relates to the effect of a statement on a juror's mental process."

disclose her prior knowledge of Dr. Friedman, but determined that Rosenblum "did not intentionally conceal her prior knowledge of Dr. Friedman during voir dire" because the nature of the voir dire questions "did not elicit information concerning the prospective juror's knowledge of the treating doctors." The court also found it plausible that Rosenblum had overlooked Dr. Friedman's name on a witness list that contained approximately 65 names.

Nonetheless, the trial court found that Rosenblum's statements about Dr. Friedman, coupled with her failure to disclose her prior knowledge of Dr. Friedman, constituted juror misconduct, and that the finding of misconduct raised a rebuttable presumption of prejudice. The court determined, however, that the presumption was rebutted because there was no evidence suggesting that Rosenblum's statements influenced the jury. Rosenblum's statements to the jury were tempered with her admonishment that jurors were only to consider the evidence adduced at trial. In addition, Dr. Friedman's testimony was relevant only to plaintiff's damages, an issue the jury never decided given its liability finding. The court concluded that Rosenblum was not biased against plaintiff and that she did not have a state of mind that prevented her from acting impartially as a juror. Finding that Rosenblum's conduct did not materially affect the substantial rights of plaintiff to a fair trial, the court denied the new trial motion. Plaintiff appeals.

DISCUSSION

Standard of Review

Juror misconduct is a ground for granting a new trial. (Code Civ. Proc., § 657, subd. 2.) "One form of juror misconduct is a juror's concealment of relevant facts or giving of false answers

during a voir dire examination. [Citations.]" (*Ovando v. County of Los Angeles* (2008) 159 Cal.App.4th 42, 57.) When evaluating a motion for a new trial based on juror misconduct, the trial court must undertake a three-step process. First, the court must determine whether the affidavits in support of the motion are admissible. (Evid. Code, § 1150; *Barboni v. Tuomi* (2012) 210 Cal.App.4th 340, 345.) Second, if the evidence is admissible, the court must then determine whether the facts establish misconduct. (*Barboni*, at p. 345.) Finally, assuming misconduct occurred, the trial court must determine whether the misconduct was prejudicial. (*Ibid*; *Whitlock v. Foster Wheeler, LLC* (2008) 160 Cal.App.4th 149, 160 (*Whitlock*).)

Juror misconduct raises a rebuttable presumption of prejudice. (*Whitlock*, *supra*, 160 Cal.App.4th at p. 162.) The presumption may be rebutted by "'an affirmative evidentiary showing that prejudice does not exist'" based upon a consideration of such factors as "'the strength of the evidence that misconduct occurred, the nature and seriousness of the misconduct, and the probability that actual prejudice may have ensued.' [Citation.]" (*McDonald v. Southern Pacific Transportation Co.* (1999) 71 Cal.App.4th 256, 265.) It may also be rebutted by a reviewing court's examination of the entire record to determine whether there is a reasonable probability of actual harm to the complaining party. (*Hasson v. Ford Motor Co.* (1982) 32 Cal.3d 388, 417.)

In determining whether juror misconduct occurred, we accept the trial court's credibility findings and findings of historical facts if supported by substantial evidence. (*People v. Majors* (1998) 18 Cal.4th 385, 417.) The determination of whether "those facts constitute [juror] misconduct [is] a legal

question we review independently." (*People v. Collins* (2010) 49 Cal.4th 175, 242; *People v. Vallejo* (2013) 214 Cal.App.4th 1033, 1043.) And "'[w]hether prejudice arose from juror misconduct . . . is a mixed question of law and fact subject to [our] independent determination.'" (*People v. Danks* (2004) 32 Cal.4th 269, 303.)

Presiding Juror Charles Roberts

During voir dire, plaintiff's counsel posed the following question to Charles Roberts: "And the fact that you pay taxes and there might be a judgment against the State, do you have any hesitation to sit on the jury with respect to that issue?" He responded: "No. I have no problem. I have an open mind. I think I'm just going to guess that, you know, there's so much evidence presented that we all -- that we all are able to come to a simple conclusion that's honest and fair."

In answering a question on the juror questionnaire regarding emotional damages, Charles Roberts wrote: "Somewhat positive, somewhat negative. Fair is fair, to me." When asked if "both sides sort of start out equal in this case," Charles Roberts replied, "Absolutely."

Responding to questions by DSH's counsel, Charles Roberts stated he could "be fair" "when it came to finding whether or not the [p]laintiff deserved any damages." Counsel also asked, "[I]f you felt and your fellow jurors felt that damages were not justified in this case, would you be okay with following that?" He said, "Sure."

Plaintiff's new trial motion contains three juror declarations she claims support her argument that Charles Roberts's voir dire responses were deceptive. Specifically, Juror Holst declared that after Charles Roberts was appointed as presiding juror, "he said that this country was not founded to

decide 'cases like this.'" Holst further stated that Charles Roberts "said that he did not believe that amounts in the multi-million dollar range (he specifically mentioned $80 million,) should be awarded to one person when we have a need for 'de-salination plants' and other local infrastructure in our County." Juror Patenaude similarly stated that Charles Roberts said "the State of California had better things to do with their money" like "'put it into a desalination plant' and other infrastructure." Juror Granada heard Charles Roberts say he was not awarding money in the case and that the "State of California could put this money towards better uses like 'building roads and bridges' and other infrastructure."

Charles Roberts's counter-declaration stated that he "expressed [his] own opinion at the onset that [plaintiff] had not proven her case based on the evidence." He conceded that he "express[ed] [his] opinion that giving [plaintiff] a huge sum of money would not be justified based on the testimony," and that such "money could well be spent on infrastructure or desalination plants or education or any other number of needed projects, but not at the expense of giving [plaintiff] justice." On the second day of deliberations, Charles Roberts proposed that the jury "award [plaintiff] lost wages." Juror Debra Roberts recalled that he "suggested giving the [p]laintiff two years of back pay." Juror O'Reilly similarly recalled that "[o]n the second day, Mr. Roberts suggested giving the [p]laintiff some money."

Debra Roberts did not recall hearing Charles Roberts say, "This country was not founded to decide 'cases like this.'" Charles Roberts explained that his comment regarding principles on which this country was founded "was in the context of [plaintiff's counsel's] closing argument citing the Magna Carta."

Plaintiff maintains that the statements made by her three declarants show that Charles Roberts committed misconduct when he stated during voir dire he would have "no problem" awarding damages to plaintiff. It is true that "a juror who conceals relevant facts or gives false answers during the voir dire examination . . . undermines the jury selection process and commits misconduct." (*In re Hitchings* (1993) 6 Cal.4th 97, 111.) It also is true that "false answers or concealment on voir dire . . . eviscerate a party's statutory right to exercise a peremptory challenge and remove a prospective juror the party believes cannot be fair and impartial." (*Ibid.*)

Plaintiff stresses that the trial court neglected to make any findings regarding whether Charles Roberts made false representations during voir dire. Where, as here, the court denies a new trial motion without making specific findings, we presume findings in support of the ruling. "'[A]n order is presumed correct; all intendments are indulged in to support it on matters as to which the record is silent, and error must be affirmatively shown.' [Citation.] We must 'view the record in the light most favorable to the trial court's ruling and defer to its findings of historical fact, whether express or implied, if they are supported by substantial evidence.' [Citation.]" (*People v. Carpenter* (1999) 21 Cal.4th 1016, 1046.) "Implicit in the order denying the motion for a new trial is a finding that [any] declarant [proffered by the moving party] was not credible. Such an implicit finding is sufficient to support the trial court's order denying the motion for a new trial." (*Jie v. Liang Tai Knitwear Co.* (2001) 89 Cal.App.4th 654, 666-667, fn. omitted ["[T]he question of the credibility of the witnesses is up to the trial court in the first instance"]; see *Whitlock*, *supra*, 160 Cal.App.4th at

p. 160 ["[I]t is the trial court that must assess the credibility of affiants or declarants, and the trial court is entitled to believe one over the other"].)

Thus, not only must we presume that the trial court did not find the declarations proffered by plaintiff to be credible, but we also must presume that the court found the declarations submitted by DSH to be credible. (*Jie v. Liang Tai Knitwear Co.*, *supra*, 89 Cal.App.4th at pp. 666-667.) Nothing in the six declarations presented by DSH suggests that Charles Roberts was less than truthful when he responded to counsel's question regarding awarding damages against the State. He did not make any comments about such damages during trial. It was only after deliberations had begun that he said that awarding plaintiff a huge sum of money "would not be justified *based on the testimony*" and that the money could well be spent on public works "*but not at the expense of giving [plaintiff] justice*." (Italics added.) This evidence shows that Charles Roberts had not prejudged the case and that he had maintained an "open mind" as he promised during voir dire.

This "open mind" became even more apparent the next day when, during deliberations, Charles Roberts suggested that the jury award plaintiff two years of back pay. Other jurors disagreed with the proposal, but such evidence of his changed position in favor of awarding compensation to plaintiff supports the view that his initial statements during deliberations did not reflect an intent to ignore his duty to evaluate the evidence. (See *People v. Allen and Johnson* (2011) 53 Cal.4th 60, 73 ["A juror who holds a preliminary view that a party's case is weak does not violate the court's instructions so long as his or her mind remains open to a fair consideration of the evidence, instructions, and

shared opinions expressed during deliberations"].) Indeed, Juror Gault declared that Charles Roberts "listened and gave everyone a chance to speak and was trying to be fair."

Nor are we persuaded by plaintiff's reliance on *Smith v. Covell* (1980) 100 Cal.App.3d 947 (*Smith*). The trial court in that personal injury case asked the prospective jurors whether there was "'anything about . . . a suit to recover damages for personal injuries and lost earnings and medical expenses and loss of the injured person's society and companionship . . . that would in any way interfere with your ability to give both sides a fair trial? In other words, may we assume that none of you feel that this type of claim or these types of claims should not be litigated in court?'" (*Id.* at p. 954.) One of the prospective jurors offered "no affirmative response to this question. But during jury deliberations, [he] stated to fellow jurors he was against people suing one another, that awarding high verdicts in cases like this was the cause of high insurance rates, and that a high verdict in this case would have a similar effect." (*Ibid.*)

It was apparent in *Smith* that the juror's negative attitude toward lawsuits was a bias against the plaintiff (and plaintiffs in general) which preexisted his service on the jury and which should have been disclosed during voir dire. No such bias appears in this case. There is no substantial basis for inferring from what Charles Roberts said during deliberations that he harbored a bias against plaintiff or plaintiffs in general. To the contrary, the statements in his declaration confirm that the views he expressed toward plaintiff during deliberations were derived not from a bias that existed from the outset, but from his impression of plaintiff's case based on the evidence presented at trial.

In sum, the record and the law support the trial court's finding that Charles Roberts did not engage in juror misconduct and that his statements during deliberations were permissible "give and take on the part of the jurors." Because plaintiff has failed to meet her burden of establishing misconduct, we need not reach the issue of prejudice.

Juror Debra Roberts

During voir dire, plaintiff's counsel asked Debra Roberts if it would be a problem, given her position with the State of California, "to go back to your colleagues and say, 'We found for the [p]laintiff and we awarded X amount of money.'" She responded, "No." Counsel then asked her if she would "bring any of [her] own information about the State to bear on the issues here," but before she could answer, he asked, "You'd listen to the evidence here?" Debra Roberts replied, "Yeah, I'd listen to the evidence." She further stated that she had been involved in a sexual harassment case, and said, in response to counsel's question, that she "[c]ould . . . put aside . . . what [her] experience was in that other case and just listen to the evidence here, and scrutinize the evidence here, so that [she'd] be assured to come to the right outcome."[4]

In her declaration, Juror Holst stated that Debra Roberts said during deliberations that "with 'government jobs' the State has to 'follow certain steps' before terminating or disciplining an employee and that it can take time." Holst also declared that Debra Roberts "talked at great lengths about unions and what happens at [California Men's Colony (CMC)] and how the State has to handle issues in a certain way when unions are involved."

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[4] There is no evidence that Debra Roberts discussed the sexual harassment case during deliberations.

Jurors Patenaude and Granada did not raise any issues regarding Debra Roberts.

Debra Roberts agreed she had "promised to keep an open mind and to not influence other jurors about [her] experience with state service," but stated the discussions the jurors had about "Sweet [were] based on the evidence in court and not on anything [she] knew about state service." She recalled some discussions about unions because the issue came up at trial, but said she "did not speak on this topic 'at great length.'" Debra Roberts "did discuss that there are steps that must be taken prior to termination," and noted that the jurors "discussed what ASH had done to follow progressive discipline based on the evidence [they] heard at trial."

Juror O'Reilly stated that "Debra Roberts did have experience with the state system, but she was very reserved in her opinions and did not say anything out of line." Presiding Juror Charles Roberts recalled that "there was [a] discussion of the 'due process' for state employees, but it was related to evidence we received regarding fair investigations by supervisors after an employee makes a complaint."

Plaintiff contends that Debra Roberts committed juror misconduct when she referred to her experience at CMC, particularly with respect to unions, and informed the jury that it takes time to terminate or discipline state employees. Plaintiff further asserts that, by talking about her experience at CMC, Debra Roberts violated her statement during voir dire to "put her own experiences aside."

As previously discussed, the trial court was entitled to disregard Holst's declaration and to credit Debra Roberts's declaration in deciding whether misconduct occurred. (*Jie v.*

Liang Tai Knitwear Co., *supra*, 89 Cal.App.4th at pp. 666-667.) Debra Roberts's declaration by itself constitutes substantial evidence that any discussion about her outside experience was minimal, related to the trial evidence, and not calculated to improperly influence other jurors. Nor is there any evidence that she made any false statements during voir dire or that the jurors gave undue weight to any of her statements regarding her state employment experience. This is supported by the fact that only one juror (Holst) complained about her statements. We agree with the trial court that Debra Roberts's brief reference to her personal experiences, as outlined in her declaration, is not misconduct. It is well established that "[a] juror does not commit misconduct merely by describing a personal experience in the course of deliberations." (*Iwekaogwu v. City of Los Angeles* (1999) 75 Cal.App.4th 803, 819; see *People v. Steele* (2002) 27 Cal.4th 1230, 1266 ["[D]uring the give and take of deliberations, it is virtually impossible to divorce completely one's background from one's analysis of the evidence"]; *In re Malone* (1996) 12 Cal.4th 935, 963 ["Jurors' views of the evidence . . . are necessarily informed by their life experiences, including their education and professional work"]; *Moore v. Preventive Medical Group, Inc.* (1986) 178 Cal.App.3d 728, 741-742. ["Jurors do not enter deliberations with their personal histories erased, in essence retaining only the experience of the trial itself. Jurors are expected to be fully functioning human beings, bringing diverse backgrounds and experiences to the matter before them"].)

In *Bandana Trading Co., Inc. v. Quality Infusion Care, Inc.* (2008) 164 Cal.App.4th 1440, we determined that Juror No. 2's conduct in referring to her accounting experience during deliberations did not constitute prejudicial misconduct, because

"[j]urors are entitled to rely on their general knowledge and experience in evaluating the evidence." (*Id.* at p. 1447.) We also noted that the complaining juror had provided no evidence indicating that Juror No. 2 had decided the case based on extraneous information. (*Ibid.*) The same is true here. Juror Holst's rather perfunctory declaration contains no evidence suggesting that Debra Roberts reached her verdict by relying on extraneous information rather than on the evidence adduced at trial. In the absence of misconduct, the trial court appropriately declined to order a new trial.

Juror Rosenbaum

Rosenbaum did not disclose during voir dire that she knew Dr. Friedman, one of plaintiff's damages experts. She apparently did not see his name on the witness list and did not recognize him until he testified. During deliberations, Rosenbaum informed at least some of the jurors that she knew Dr. Friedman and that she questioned his credibility. Rosenbaum acknowledged this in her declaration, but stated she told the jurors that "'we can't consider this.'" Presiding Juror Charles Roberts declared that Rosenbaum "clearly stated that we were not to consider her experience with him." Juror Debra Roberts "recall[ed] that a juror said something like knowing or knowing someone that had seen Dr. Friedman, but we all agreed that we were not to discuss this information or let it have . . . any impact on our verdict." Juror O'Reilly stated that Rosenbaum "clearly indicated that we were not to consider her opinion of him and were to follow the judge's instructions." Juror Millar corroborated that statement.

The trial court found that Rosenbaum's "statements to the other jurors, coupled with a failure to disclose the information to the Court and counsel at such time she made the possible

connection of Dr. Friedman with her prior experience constituted misconduct." Although juror misconduct raises a presumption of prejudice, "[a]ny presumption of prejudice is rebutted, and the verdict will not be disturbed, if the entire record in the particular case, including the nature of the misconduct or other event, and the surrounding circumstances, indicates there is no reasonable probability of prejudice, i.e., no *substantial likelihood* that one or more jurors were actually biased against the defendant." (*In re Hamilton* (1999) 20 Cal.4th 273, 296.)

The trial court concluded that the presumption was rebutted because "there is no evidence suggesting that Rosenblum's statements influenced other jurors." First, the court noted that "Dr. Friedman was a witness related to damages and harm suffered by [p]laintiff, not liability." Because the jury never reached the damages issue, Rosenblum's comments regarding Dr. Friedman could not have influenced the verdict. (See *People v. Cabrera* (1991) 230 Cal.App.3d 300, 305 ["presumption of prejudice is rebutted if the outside evidence is neutral or irrelevant to defendant's guilt"]; see also *Chiapetta v. Bahr* (Wash. Ct.App. 2002) 46 P.3d 797, 801 [comments that related only to damages, which were never reached by the jury, may not be used to impeach the verdict].)

Second, the trial court observed that Dr. Friedman's "diagnosis of PTSD was consistent with the opinions of a number of other witnesses." Since the record confirms that five other doctors also opined that plaintiff suffered from PTSD, Dr. Friedman's testimony was of minimal importance to plaintiff's damages case.

Third, the trial court emphasized that "Rosenblum made the statement to jurors that her opinion of Dr. Friedman should

not be considered in deliberations." Several other jurors corroborated that statement. In *People v. Lavender* (2014) 60 Cal.4th 679, the court concluded that even where a juror had discussed an improper matter, the presumption of prejudice was rebutted if there was strong evidence that the jurors had been admonished to disregard the improper comment. (*Id.* at p. 687.) Rosenblum made that admonishment here and the jurors "all agreed that we were not to discuss this information or let it have any impact on our verdict."

Finally, the trial court noted that Rosenblum's prior experience with Dr. Friedman and her disagreement with his diagnosis about an employee's mental condition in another incident showed that Rosenblum did not have a general bias against employees who claimed emotional distress. The court found credible Rosenblum's statement that she disagreed with Dr. Friedman's conclusion that no harm had been suffered by the employee in the earlier incident. The court also found credible Rosenblum's statement in "her juror's questionnaire that she was somewhat positive about awarding money damages to compensate someone for emotional distress, and . . . that she had no problem with such an award if compensation was due to the employee."

Exercising our independent review, we uphold the trial court's decision that any presumption of prejudice was rebutted by an affirmative showing that prejudice did not exist. (*Whitlock*, *supra*, 160 Cal.App.4th at p. 162.) The record as a whole supports the court's ruling, and we conclude there was no error in denying plaintiff's motion for new trial.

DISPOSITION

The judgment and order denying the motion for new trial are affirmed. Defendants/respondents shall recover their costs on appeal.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Ginger E. Garrett, Judge

Superior Court County of San Luis Obispo

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