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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v TONY RAY ALLEN, JR., Defendant-Appellant.	UNPUBLISHED November 13, 2026 10:49 AM No. 363934 Genesee Circuit Court LC No. 20-047266-FC

Before: M. J. KELLY, P.J., and RIORDAN and RICK, JJ.

PER CURIAM.

Defendant, Tony Allen, Jr., appeals as of right his jury-trial convictions of first-degree home invasion, MCL 750.110a(2), assault with intent to murder, MCL 750.83, domestic violence, MCL 750.81(2), fourth-degree child abuse, MCL 750.136b(7), and two counts of carrying a firearm during the commission of a felony (felony-firearm), MCL 750.227b.[1] For the reasons stated in this opinion, we affirm.

I. BASIC FACTS

Allen met Lika Muse in December 2016 and the two began a "dating relationship." Around July or August 2018, Muse discovered that Allen was cheating on her, so she ended the relationship. In response, Allen publicly apologized to her and they ended up rekindling their relationship until Muse learned that Allen was again cheating on her. After ending the relationship for the second time, Muse realized that she was pregnant with Allen's child. The two decided to co-parent. During the pregnancy and after their child's birth, their relationship remained uncertain. At times they discussed getting back together and Allen helped Muse find housing near her parents' house. They also cooperatively parented their child.

[1] Allen was acquitted of assault with intent to do great bodily harm less than murder, MCL 750.84, and a count of felony-firearm associated with that charge.

In the evening on July 10, 2020, Allen texted Muse and told her that he was on his way to her home. Muse responded that she was going to bed because she had to work the next morning. A couple hours later, Allen showed up at her door smelling of alcohol. Allen wanted to talk, but Muse did not so she walked away from the door. She testified that Allen then broke the glass on the screen door and punched out the glass on the main door. As he was doing that, she opened the door and demanded to know what he was doing. He responded by grabbing her and pushing her through the house until she hit a full-sized mirror. She fell down after hitting the mirror. According to Muse, they got into an extended verbal argument, during which time she was trying to calm him down or divert him by pointing out that his arm was bleeding and by faking a panic attack. At one point, she tried to call 9-1-1, but he prevented her. At another point, he placed a gun to his head and threatened to make her watch him kill himself. A short part of the confrontation was also recorded on Muse's phone and it showed that Allen had a towel wrapped around his arm. Muse testified that this was because Allen had cut his forearm during the altercation. Eventually, Muse ran out of the house with her phone, called for help, and hid in a neighbor's bushes until the police arrived. Two days later, the police prepared a report of the incident upon her request.

Muse started the process of obtaining a personal protection order (PPO) against Allen as a result of the July 10 incident. As part of that process, she learned that the police had not filed a report in connection with the July 10 incident. Upon her request, however, one was prepared. Ultimately, Muse did not go forward with obtaining the PPO. She wanted her child to have a father and did not want to see him as another "black male" who was "in the system." She also stated that Allen persuaded her to "drop the PPO" and that the delay in the filing of the police report was a sign that she should drop the matter. After that, the two continued co-parenting, but the drop-offs and pick-ups were facilitated by Muse's mother.

Over a month later, on August 28, 2020, Muse was sleeping in her bed with their child when Allen telephoned. He was "going off," saying that Muse was a "bitch" and a "liar." Muse expressed confusion and told him that she was sleeping before hanging up and going back to sleep. A little while later, she was startled out of her sleep by someone ringing the doorbell. She went to the door and realized that it was Allen. Through the door, Allen told her that he wanted some personal items that he had at her house, and he wanted to see their child. Muse told him she would leave the items with her mother, that their child was asleep, and that he could not come in. Based upon his body language, Muse could tell that Allen was "pissed." He walked away from her door, however.

Muse was walking back to her bedroom when she heard the sound of glass breaking. She then discovered that Allen was in the back porch area and that it was he who had broken the glass. He demanded, "Bitch open this fuckin' door." Muse instead turned, ran to her bedroom, and locked the door. She went to call her mother, but accidentally dialed Allen's number. After quickly hanging up she called her mother, saying "hurry up he's in here" while Allen was "kicking" the bedroom door. After a couple of kicks from Allen, the entire door broke off its hinges and he entered the room "in rage."

Allen, who had a gun with him, fired a shot into the mattress where his son was sleeping. Muse yelled at him that she did not "give a damn about what you mad about because you just almost shot my baby." In response, he struck her. He then choked her until she could not breathe. At one point, he pinned her to the wall, with a hand around her throat and a gun pointed at her. He

said, “Bitch I will fuckin’ kill you.” He demanded that she admit that she was “a hoe,” but she refused and was “steady cursing him out.” He struck her across the face, causing her to bleed. The splatter hit their child.

At that point, their child was standing up and reaching for Muse while crying. Muse said that she covered him with her body. Allen started walking backwards while looking at her before turning as if to leave. He then came back, looked at her, aimed his gun at her, called her a “bitch,” and then fired a single shot. Muse did not realize that she had been shot. She instead felt “confusion” and her “adrenaline was rushing.”

Muse could then hear her parents banging at the door. She tried to walk, but could not do so. She also tried, but failed to take her child with her toward the door. Instead, she crawled by herself to the door and opened it. She left a trail of blood from the bedroom to the front door. After opening the door for her parents, she realized that she had been shot. She was taken from the scene by ambulance. A medical examination revealed that she had been shot in the leg. The bullet broke her femur and she had to undergo surgery. Muse told her parents and the police officers who responded that Allen had broken into the house, assaulted her, shot at their child, and shot her. Her parents confirmed that Muse had called because Allen had broken in and that Muse told them that Allen had shot her.

Following deliberations, the jury convicted Allen of all but two of the charges that had been brought against him.

After trial, Allen learned that one of his jurors had failed to disclose that she knew him. During a subsequent evidentiary hearing, Juror 9 admitted that she and Allen worked at the same company, but on different shifts. He was her supervisor on occasions when he came into work early. Juror 9 admitted that, at work, she heard “gossip” or “rumors” about Allen, including that he was a “flirty type,” that he “flirted” with the women at work, and that the women at work would “fight” over him. Her understanding was that he was also sexually involved with women at work. Juror 9 also revealed that she had heard that Allen had gotten in trouble because he had destroyed a girlfriend’s property. She testified that the rumors that Allen had been destructive to his girlfriend’s property gave her some assurance that Allen “probably did what he was accused of doing.” However, she also testified that she did not pay attention to the rumors, that she based her verdict solely upon the evidence presented at trial, and that she did not discuss her knowledge of Allen with the other jurors.

Juror 9 explained that she did not recognize Allen until the second day of trial. She stated that, when she was driving to work on the second day of trial, she received a phone call from someone who identified himself as “Tony” and then hung up. Allen’s first name is “Tony.” Juror 9 stated that she received a text message from a co-worker who told her to “speak up for Tony” and a Facebook message from another co-worker who also told her to “speak up for Tony.” She did not respond to the messages. And she did not advise the court that she had received the communications or that she knew Allen because she did not realize that she was supposed to do so.

The first two days of Allen's trial were held before Labor Day weekend and the last day of his trial was after Labor Day. According to Juror 9, after the trial was over, one of her supervisors at work told her that she should not have sat on a jury for a trial of a person she worked with. Juror 9's testimony was impeached by the supervisor, who testified that Juror 9 worked over Labor Day weekend and that she told Juror 9 at that time that she should not be on Allen's jury. Another co-worker also testified that she heard Juror 9 discussing the case with another worker during a bathroom break. Specifically, she recalled Juror 9 saying that Allen was "always getting into it with" his girlfriends, that she discussed arguments Allen had with a woman, and that she said something like "he know he damn well did that." She recalled that this conversation happened before Labor Day. Additionally, the co-worker who allegedly texted Juror 9 to "speak up for Tony" stated that he did not send any such message and that he did not provide Allen with Juror 9's phone number.

Eight other jurors from Allen's trial were questioned at the evidentiary hearing. They did not know that Juror 9 knew Allen from work, nor were they informed of the gossip and rumors that Juror 9 had heard about Allen prior to trial. There were no allegations that anyone other than Juror 9 was exposed to the extrinsic evidence related to the case. Following the evidentiary hearing, the trial court denied the motion for new trial. This appeal follows.

II. EXTRANEOUS INFLUENCE

A. STANDARD OF REVIEW

Allen argues that he is entitled to a new trial because Juror 9 was exposed to extraneous information about him before trial and admitted that the extraneous information "assured" her that Allen had done what he was accused of doing. A trial court's decision whether to grant or deny a motion for a new trial is reviewed for an abuse of discretion. *People v Johnson*, 502 Mich 541, 564; 918 NW2d 676 (2018). "An abuse of discretion occurs when a trial court's decision falls outside the range of reasonable and principled outcomes." *Id*. Alleged violations of the jury-selection process receive de novo review. *People v Fletcher*, 260 Mich App 531, 554; 679 NW2d 127 (2004).

B. ANALYSIS

A criminal defendant has the right to a trial by an impartial jury. US Const, Am VI; Const 1963, art 1, § 20. "During their deliberations, jurors may only consider the evidence that is presented to them in open court." *People v Budzyn*, 456 Mich 77, 88; 566 NW2d 229 (1997). "Where the jury considers extraneous facts not introduced in evidence, this deprives a defendant of his rights of confrontation, cross-examination, and assistance of counsel embodied in the Sixth Amendment." *Id*. "[J]urors are "presumed to be . . .impartial, until the contrary is shown." *People v Miller*, 482 Mich 540, 550; 759 NW2d 850 (2008). "The burden is on the defendant to establish that the juror was not impartial or at least that the juror's impartiality is in reasonable doubt." *Id*.

A defendant claiming that there was extrinsic influence on the jury requiring reversal must prove two things. "First, the defendant must prove that the jury was exposed to extraneous influences." *Budzyn*, 456 Mich at 88-89. "Second, the defendant must establish that these extraneous influences created a real and substantial possibility that they could have affected the

jury's verdict." *Id*. at 89. "Generally, in proving this second point, the defendant will demonstrate that the extraneous influence is substantially related to a material aspect of the case and that there is a direct connection between the extrinsic material and the adverse verdict." *Id*.

In this case, Juror 9 was clearly exposed to an extraneous influence. She admitted to recognizing Allen from work and to having heard rumors regarding him. Notably, the rumors she heard included that he was "flirty" with the women at work and that he "messed around" with them sexually. This rumor could help strengthen Muse's testimony because it corroborated her testimony that Allen cheated on her with other women. Next, Juror 9 also heard rumors that Allen was "destructive" toward his girlfriend's property and had gotten in trouble for it. This again corroborates Muse's testimony that, on July 19, Allen got into a fight with her, broke her screen door, broke the glass on the main door, and damaged a full-length mirror in her house when he was physically assaulting her. Likewise, it corroborates Muse's testimony that on August 28/29, she got into a fight with Allen, that he broke into her house through the back porch area by breaking glass, that he fired a bullet into her mattress while their son was sleeping on it, and that he shot her in the leg.

That is, the extraneous influence was substantially related to a material aspect of the case because it involved the same general subject matter: relationship infidelity and domestic violence between Allen and his girlfriend that involved the physical destruction of her property. See *id*. Moreover, there was a direct connection between the extrinsic rumors and the adverse verdict given that Juror 9, in fact, admitted that the rumors provided her with assurance that a guilty verdict was warranted.

In finding that there was no extraneous influence, the trial court focused on the fact that Juror 9 did not know whether the rumors were or were not true. That fact is not dispositive. Here, the rumors about Allen painted him as the quintessential bad man: a person who cheated on his girlfriends and then destroyed their property. The rumors allowed Juror 9 to surmise that Allen was a bad man. And she, in fact, admitted during her testimony that she received "assurance" from the rumors that Allen was guilty of doing what he was accused of doing to Muse. Thus, in light of Juror 9's undisputed testimony, both of the fact that she was exposed to extraneous information about Allen and that the information helped assure her that a guilty verdict was appropriate, Allen has established both prongs of the *Budzyn* test.

That does not end the inquiry. If a defendant can prove both prongs of the *Budzyn* test, the burden shifts to the prosecution to prove that the error was harmless beyond a reasonable doubt. *Budzyn*, 456 Mich at 89. The prosecution can meet that burden "by proving that either the extraneous influence was duplicative of evidence produced at trial or the evidence of guilt was overwhelming." *Id*. at 89-90.

Here, Allen's defense at trial was that there were inconsistencies in Muse's testimony regarding the timeline, inconsistencies between what she recalled saying when she called her parents and what they recalled her saying, and evidence that Muse had made statements on social media suggesting that she was a liar and was practicing her lies. The defense also stressed that the police had not processed all the evidence at the scene, including dusting for fingerprints in the back porch or analyzing the trail of blood leading from Muse's room to the front door.

Yet, Muse's testimony was clear. On July 10, Allen came to her house and when turned away, he broke the screen door and the main door. He choked her, breaking a full-length mirror in the house in the process. He sustained a laceration on his arm during the altercation and that laceration was bandaged with a towel. During the incident, Allen had a gun and threatened violence to himself. Photographs corroborated Muse's testimony regarding the damage to her house. A video taken on her cell phone during the incident also revealed that, consistent with Muse's testimony, Allen's arm was bandaged with a towel.

Next, during the August incident, photographs again corroborated the damage Allen inflicted to Muse's house. Photographs and additional testimony corroborated Muse's testimony that she was shot in the leg, that she crawled to the front door to let her parents in, that the mattress in the bedroom was shot, and that Allen had been in the house. Additionally, the key fob to Allen's vehicle was located in the house and his vehicle was parked near her house. Even considering that there were minor impeachments of Muse's veracity and her memory of events, her testimony and the physical evidence corroborating that testimony provided overwhelming evidence of guilt. As such, notwithstanding Juror 9's exposure to and reliance upon extraneous information, Allen is not entitled to a new trial. See *id*.

Affirmed.

/s/ Michael J. Kelly
/s/ Michael J. Riordan
/s/ Michelle M. Rick