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“Hey, Google, What Are the Elements of Homicide by Vehicle in the First Degree?”: The Supreme Court of Georgia Reinforces the Prohibition on Extrajudicial Information Considered by a Jury in Criminal Trials

Savannah Hall*

I. INTRODUCTION

In a criminal trial, the presentation of evidence and the instruction of law to the jury are of crucial importance to ensure that a person is only convicted based upon sound understandings of the factual and legal framework under which they were charged. The complexities surrounding the rules of evidence are in place so that jurors are only allowed to consider the facts and testimony permissible under the rules of evidence, meaning it is of utmost importance for the jury to consider solely those things which a judge deems admissible, relevant, and helpful to understanding the case. However, given the technological nature of modern society and the vast availability of an Internet connection, it has become increasingly difficult to keep jurors confined in the bubble of information which is supposed to surround them at trial. The legal remedies for a guilty verdict rendered based on extrajudicial information

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obtained by the jury are firmly established. Nevertheless, it is time for the federal and state legislatures to further assess the issue to move the criminal justice system away from wrongful convictions and towards a trustworthy system of justice which ensures fairness and upholds the constitutional rights of those accused of a crime.

Upon showing that a member of the jury has obtained extrajudicial information during trial or deliberations, a presumption is given to the defendant that the presence of the outside information harmfully prejudiced the verdict. From this presumption of prejudice, the State bears the burden of proving that the information was harmless beyond a reasonable doubt. On a motion for a new trial, jurors are permitted to testify as to the existence of extrajudicial information that was obtained by a juror and brought to the other members of the jury's attention at any point before the verdict is delivered. They may not, however, testify to either the weight that the extrajudicial information had on their mental processes in reaching their verdict, or the reasons why they reached a particular decision. Unless the State proves beyond a reasonable doubt that the extrajudicial information was harmless and that the verdict was not inherently lacking in due process, the defendant is entitled to a new trial based on the Sixth Amendment right to a trial by an impartial jury, and the right to confront witnesses brought against them. These were the principles reaffirmed by the Supreme Court of Georgia in *Harris v. State*,¹ which resulted in a reversal of the decisions of the lower courts and an opinion remanding the case to be reconsidered applying the proper legal standards.²

II. FACTUAL BACKGROUND

Shalita Harris was a school bus driver transporting thirty-three elementary school students whose ages ranged from pre-kindergarten to fifth grade. As they drove down the road, the bus approached a sharp curve and, while traveling at a speed greater than the posted speed limit signs, the bus departed from the roadway and landed on its side. The crash caused a six-year-old passenger to be ejected from the bus which caused injuries that resulted in her death. Consequently, Harris was indicted for and convicted of homicide by vehicle in the first degree and reckless driving.³ After the trial concluded, Harris's attorney learned

1. 314 Ga. 51, 875 S.E.2d 649 (2022) [hereinafter *Harris II*].

2. *Id.* at 51, 875 S.E.2d at 650.

3. Additionally, Harris was also charged with Speeding, Driving Too Fast for Conditions, and two counts of Homicide by Vehicle in the Second Degree. The trial court issued a directed verdict of acquittal for Driving Too Fast for Conditions and one count of

from two jurors that some of the jurors had gathered information from Google regarding the difference in the severity of the charges relating to sentencing. Those jurors then shared the information regarding the differences with the other jurors during deliberations.⁴

Harris filed a motion for a new trial and an amended motion for a new trial which was based on jury misconduct. All twelve jurors testified at the hearing, and two of the jurors testified that they Googled the difference between homicide by vehicle in the first and second degree.⁵ The information was shared among all of the jurors during deliberations which subsequently resulted in a conviction for homicide by vehicle in the first degree, a felony that carries a harsher sentence. Harris argued that a presumption of prejudice existed because the jurors obtained and considered extrajudicial information during deliberations which created a burden for the State to overcome that presumption beyond a reasonable doubt. The State argued that due to the enactment of the new evidence code and Official Code of Georgia Annotated section 24-6-606(b),⁶ the presumption had been quashed.⁷ The trial court agreed with the State and denied Harris's motion for a new trial stating that:

The defense relies on an appellate court decision, *Chambers v. State*, [] for this proposition. However, *Chambers* was decided based on the law prior to the adoption of the new evidence code. Thus, it provides little guidance as to how to assess prejudice pursuant to O.C.G.A. § 24-6-606 once there is evidence of extrajudicial information.⁸

The trial court further found that, because the information obtained by the jury was neither related to evidentiary matters nor substantive law

Homicide by Vehicle in the Second Degree. The jury acquitted Harris of Speeding and the remaining count of Homicide by Vehicle in the Second Degree. Brief for Appellant at 1–2, *Harris v. State*, 314 Ga. 51, 875 S.E.2d 649 (2022) (No. S22G0018).

4. *Harris v. State*, 360 Ga. App. 695, 695–97, 859 S.E.2d 587, 589–90 (2021) [hereinafter *Harris I*].

5. The judge read a warning to the jury on days two, three, and four of trial which explicitly instructed them that they were not to conduct any independent research or investigation. Transcript of Excerpt of Jury Trial Proceedings, *Harris v. State*, 314 Ga. 51 (2022) (No. S22G0018). Despite these warnings, one of the jurors who did independent research did so after day four of trial, meaning she had been warned about the prohibition several times by the time she Googled the offenses charged. Transcript of Jury Instructions, *Harris v. State*, 314 Ga. 51 (2022) (No. S22G0018).

6. O.C.G.A. § 24-6-606(b) (2022).

7. Brief for Appellant at 17, *Harris II*, 314 Ga. 51, 875 S.E.2d 649 (No. S22G0018).

8. *Id.* at 17–18.

but was instead about sentencing matters, there was no reasonable probability that the extraneous information impacted their verdict.⁹

Harris appealed, arguing that the trial court abused its discretion in determining that the presumption of prejudice was abrogated with the enactment of the new evidence code, thus rendering its analysis erroneous by failing to hold the State to the burden of overcoming the presumption.¹⁰ The Georgia Court of Appeals affirmed the trial court's decision without addressing whether it applied the correct standard for the issue.¹¹ It reasoned that because the information obtained by the jury was merely regarding sentencing differences as opposed to substantive law, the misconduct was not the type that was "so inherently prejudicial as to require a new trial."¹² It held that even though the actions of the jury were improper, they were harmless beyond a reasonable doubt and did not contribute to the verdict.¹³

The Supreme Court of Georgia vacated the Georgia Court of Appeals' opinion and remanded the case to the trial court to decide, based on the correct legal standard, whether Harris's motion for a new trial should be granted.¹⁴ Regarding the actions of the trial court, the Supreme Court of Georgia held that the lower court was incorrect in deciding that O.C.G.A. § 24-6-606 eliminated the presumption of prejudice given to a defendant in cases involving jury misconduct.¹⁵ It also found error in the standard used by the trial court in determining prejudice which should have been the "beyond a reasonable doubt" standard—the appropriate standard for most constitutionally-based errors, like juror misconduct.¹⁶ The Supreme Court of Georgia noted that the Georgia Court of Appeals was correct in recognizing that the presumption of prejudice applies when there is a showing of juror misconduct and in stating that the prosecution must overcome that burden beyond a reasonable doubt.¹⁷ Nevertheless, the court determined there was error in the assertion that extrajudicial

9. *Harris II*, 314 Ga. at 52–53, 875 S.E.2d at 651.

10. Brief for Appellant at 18–19, *Harris II*, 314 Ga. 51, 875 S.E.2d 649 (No. S22G0018).

11. *Harris II*, 314 Ga. at 53, 875 S.E.2d at 651 (noting the Georgia Court of Appeals' omission).

12. *Harris I*, 360 Ga. App. at 698–99, 859 S.E.2d at 591 (internal quotation marks omitted).

13. *Id.* at 699, 859 S.E.2d at 591.

14. *Harris II*, 314 Ga. at 58, 875 S.E.2d at 654.

15. *Id.* at 54, 875 S.E.2d at 652.

16. *Id.* at 55, 875 S.E.2d at 652–53.

17. *Id.* at 56, 875 S.E.2d at 653.

information about the differences in the severity of sentences had no ability to cause prejudice.¹⁸

III. LEGAL BACKGROUND

The foundational principle prohibiting jurors from considering extraneous and extrajudicial information while deliberating in a criminal trial is deeply rooted in both the United States Constitution and the Georgia Constitution. The Sixth Amendment¹⁹ to the U.S. Constitution explicitly gives criminal defendants the right to trial by an impartial jury and to confront witnesses that the government brings against them. This right also applies to defendants involved in state prosecutions by way of the Fourteenth Amendment's Due Process Clause.²⁰ These ideals are further mirrored in the language of the Georgia Constitution, which solidifies the centrality of these principles to the rights of Georgia citizens.²¹

Georgia caselaw shows that courts extend the presumption of prejudice to criminal defendants when an issue of jury misconduct arises, and it outlines the process that trial courts are to follow in deciding whether extrajudicial information harmed the defendant to the point of requiring a new trial. In *Shaw v. State*,²² the Supreme Court of Georgia explained that the law provides a presumption that the defendant has been prejudiced by a showing of jury misconduct and “the *onus* is upon the state to remove this presumption by proper proof.”²³ The state bears the responsibility of proving beyond a reasonable doubt that no harm occurred to the defendant because of juror irregularity.²⁴ However, Georgia courts will not disturb a jury verdict and order a new trial based solely upon jury misconduct unless the substance of the statements is so prejudicial that the verdict rendered must be considered “inherently lacking due process.”²⁵ The rationale behind the impeachment of verdicts being proper only when they inherently lack due process is founded in both common law and statutory rules.

18. *Id.*

19. U.S. CONST. amend. VI.

20. U.S. CONST. amend. XIV.

21. GA. CONST. art. I, § 1, para. 11.

22. 83 Ga. 92, 9 S.E. 768 (1889).

23. *Id.* at 98, 9 S.E. at 769.

24. *Sims v. State*, 266 Ga. 417, 419, 467 S.E.2d 574, 577 (1996).

25. *Id.* (quoting *Bobo v. State*, 254 Ga. 146, 327 S.E.2d 208 (1985)).

A. *Verdict Impeachment—Common Law Roots and Statutory Adoption*

The idea that jurors should not be used as witnesses in order to impeach their own verdicts arose out of decisions made in English courts and has become a foundational principle in American courts. While this rule is technically an issue of evidence and bears no consequence on the presumption of prejudice following acts of misconduct among the jury, it is worth briefly examining the parameters of the rule to understand the exception relevant in *Harris* and other similar cases.

The United States has long respected the idea that a juror should not be allowed to easily impeach their own verdicts, even in the strangest of factual scenarios. The Supreme Court of the United States held in *Tanner v. U.S.*²⁶ that the district court did not err when it denied the defendant's request to have an evidentiary hearing so jurors could testify about the uses of drugs and alcohol during trial.²⁷ Counsel for the defense was informed about the drug and alcohol use by two jurors who separately confessed that many of the jurors were intoxicated and impaired during the trial, that several of them consumed large quantities of alcohol during lunch recesses, and that some were using illegal drugs such as marijuana and cocaine during trial.²⁸ Despite the admissions that jurors were stuttering and falling asleep during the presentation of evidence at trial, the district judge denied the request for an evidentiary hearing because the alcohol and drug use did not qualify as an "outside influence" under the Federal Rules of Evidence.²⁹ The Supreme Court of the United States held that testimony by the jurors on their uses of alcohol and drugs was barred by Federal Rule 606(b)³⁰ because the conduct here did not rise to level of juror incompetence where there is a showing of "substantial if not wholly conclusive evidence of incompetency."³¹ The Court also held that the evidentiary hearing regarding the jurors' usage of drugs and alcohol was not required by the Sixth Amendment.³² Those rights are adequately protected by aspects of the trial process, the ability of the court to observe the jury's behavior, and the trial court's ability to hold a post-verdict evidentiary hearing based on non-juror evidence of the alleged misconduct.³³

26. 483 U.S. 107 (1987).

27. *Id.* at 127.

28. Brief for the Petitioners at 9–10, *Tanner v. U.S.*, 483 U.S. 107 (1986) (No. 86-177).

29. *Id.* at 11.

30. FED. R. EVID. 606(b).

31. *Tanner*, 483 U.S. at 125 (internal quotation marks omitted).

32. *Id.* at 127.

33. *Id.*

While the preservation of a verdict is an essential goal of courts in both federal and state jurisdictions, the verdict will not be protected where a constitutional issue arises involving the infringement of a defendant's fundamental right to a trial by a fair and impartial jury. In *Watkins v. State*,³⁴ the Supreme Court of Georgia was presented with a case of jury misconduct that violated the defendant's constitutional rights and caused harmful prejudice to his trial. It identified several important policy considerations justifying the general rule that jurors cannot impeach their own verdict.³⁵ Principles that were discussed include: the favorability of promoting the finality of jury verdicts, the requirement of protecting jurors from harassment after a trial, and the need to keep the sanctity of jury deliberations intact.³⁶ However, there was a need to differentiate between those situations where the public policy considerations demanded the protection of the verdict from those where a constitutional issue arises in relation to the concept of giving criminal defendants a right to a fair trial by an impartial jury. According to the court, the extrajudicial information obtained by the jurors in that case caused the members of the jury to become "unsworn witnesses against the appellant in violation of the Sixth Amendment."³⁷

The court in *Watkins* relied on *Parker v. Gladden*,³⁸ a decision by the Supreme Court of the United States, which held that the defendant had been prejudiced by a bailiff's interaction with some members of the jury and that the verdict inherently lacked due process.³⁹ In its *per curiam* opinion, the Court explained that the constitutional rights of a criminal defendant to confront and cross-examine witnesses brought against them are fundamental to ensuring a fair trial in accordance with the Constitution.⁴⁰ The Court noted that "the "evidence developed" against a defendant shall come from the witness stand in a public courtroom where

34. 237 Ga. 678, 229 S.E.2d 465 (1976). In *Watkins*, two jurors made an unauthorized visit to the scene of the alleged crime to test how long it would take a person to drive from that location to the defendant's house. The jurors proceeded to relay their findings to the full jury and, because of their information, a critical gap in the timeline of events surrounding the alleged crime was explained. The trial court denied the defendant's motion for a new trial based on the rule that jurors cannot impeach their own verdicts. *Id.* at 683–84, 229 S.E.2d at 469–70.

35. *Id.* at 683–84, 229 S.E.2d at 470.

36. *Id.*

37. *Id.* at 684, 229 S.E.2d at 470.

38. 385 U.S. 363 (1966).

39. *Id.* at 365.

40. *Id.* at 364.

there is full judicial protection of the defendant's rights of confrontation, of cross-examination, and of counsel."⁴¹

The *Watkins* decision created a foundation in Georgia caselaw for the exceptions which became codified in O.C.G.A. § 24-6-606. The statute, which was adopted from the Federal Rules of Evidence, provides that Rule 606(b) prohibits a juror from testifying or providing other evidence about anything that happened during deliberations, including the reasons that caused the jury to reach their verdict or an individual juror's mental processes throughout deliberation.⁴² The exception that is of utmost importance is that jurors can testify if there is an issue regarding extrajudicial information or improper outside influence that is prejudicial to the defendant.⁴³ Federal courts have explained that the trial court, while dealing with matters involving jury misconduct, may not inquire "into the subjective effect of such information on the particular jurors," but only to whether the alleged extraneous information was either obtained by or shared with a juror.⁴⁴ While this provision of the Evidence Code is relevant to how the trial judge should conduct a hearing on an issue of jury misconduct, it is well settled under Georgia law that the existence of Rule 606(b) has no impact or effect on the presumption of prejudice that is given to a criminal defendant.⁴⁵ Further, it does not alleviate the prosecution's burden for proving beyond a reasonable doubt that the extraneous information was not so prejudicial as to cause the verdict to be lacking in fundamental due process.⁴⁶

B. Determining the Level of Prejudice—Modern Caselaw Interpretation

The Georgia Court of Appeals analyzed the relationship between extrajudicial information and Sixth Amendment rights in *Chambers v. State*.⁴⁷ The defendant alleged error in the trial court's finding that extrajudicial information obtained by a juror and shared with the other members of the jury was not so prejudicial as to be considered lacking due process. The juror who engaged in the misconduct Googled the

41. *Id.* (quoting *Turner v. State of La.*, 379 U.S. 466, 472–73 (1965)).

42. O.C.G.A. § 24-6-606(b).

43. *Id.* The statute also allows jurors to testify when there is either a question of whether an outside influence improperly bore upon any juror or whether a mistake was made when the verdict was entered onto the verdict form. *Id.*

44. *U.S. v. Lloyd*, 269 F.3d 228, 237 (2001).

45. *Harris II*, 314 Ga. at 55, 875 S.E.2d at 652.

46. *Id.* at 53, 875 S.E.2d at 651.

47. 321 Ga. App. 512, 739 S.E.2d 513 (2013).

definition for the defense of habitation and shared it with the other jurors in an attempt to alleviate confusion that they were experiencing over the concept. After trial, the same juror who conducted the Google search called the prosecutor and eventually explained what happened. After an investigation was conducted, the trial court, basing its conclusion on the testimony of one juror and the affidavits of the other eleven, found that the misconduct did not reach the level of being inherently lacking in due process.⁴⁸ The Georgia Court of Appeals disagreed and held that that there was “at least a reasonable possibility that the [extrajudicial information] contributed to the conviction, and that the verdict must therefore be deemed inherently lacking in due process.”⁴⁹ The court noted that when a jury bases their decision on “law” obtained by a juror and not from the court, it constitutes a patent violation of a criminal defendant’s Sixth Amendment rights to be present at all critical proceedings and to have a trial by a fair and impartial jury.⁵⁰

In *Beck v. State*,⁵¹ the Supreme Court of Georgia found that the trial court erroneously denied the defendant’s motion for a new trial based on extrajudicial information considered by the jury in reaching a verdict.⁵² Three jurors testified that they discussed the differences in the possible sentences while they were deliberating, although there was no credible testimony as to how the information came to the jury. The other eight jurors testified that they did not obtain or consider anything with regard to sentencing during deliberation.⁵³ The trial court, in denying the motion for a new trial, relied on two of the three jurors’ testimonies that, while they did discuss sentencing, it did not affect their verdicts. Further, the testimony of the third juror was found to lack credibility due to inconsistencies regarding how the discussion affected her verdict.⁵⁴ The Supreme Court of Georgia reasoned that, instead of appropriately following Rule 606(b), the trial court based its finding on the internal jury deliberations and the effect of extraneous information on the verdict.⁵⁵ Rather, the trial court should have inquired into whether the outside

48. *Id.* at 519, 739 S.E.2d at 519.

49. *Id.* at 522, 739 S.E.2d at 521 (quoting *Bobo*, 254 Ga. at 148, 327 S.E.2d at 211).

50. *Id.* at 518, 739 S.E.2d at 518.

51. 305 Ga. 383, 825 S.E.2d 184 (2019).

52. *Id.*

53. Due to medical reasons, the twelfth juror was not present at the hearing for the motion for a new trial and thus was not able to testify about the issue. *Id.* at 385, 825 S.E.2d at 186.

54. *Id.*

55. *Id.* at 387, 825 S.E.2d at 187.

information existed and evaluated the level of prejudice to determine whether it rose to the appropriate standard.⁵⁶

The Supreme Court of Georgia reached a different conclusion in *Burney v. State*,⁵⁷ where the court determined there was no error in the trial court's denial of a motion for a new trial based on alleged juror misconduct.⁵⁸ The trial court was made aware of potential juror misconduct involving one juror, L.F., who Googled the terms "malice" and "malice murder" but did not share the results of the search with any other jurors.⁵⁹ The trial court did, during deliberations, have to bring the jury back into the courtroom to recharge them on "malice murder" due to confusion. The verdict was not rendered until after the terms were re-explained to the jury and L.F. did not make any argument in deliberations pertaining to anything she learned from the internet search.⁶⁰ On appeal, the Supreme Court of Georgia agreed with the trial court that the irregularity did not impact any juror's understanding of the charges and did not warrant a new trial because the verdict was not inherently lacking in due process.⁶¹ Thus, the misconduct in that case was harmless beyond a reasonable doubt.

IV. COURT'S RATIONALE

Justice Verda Colvin delivered the unanimous opinion in *Harris II*, reversing the Georgia Court of Appeals' decision and remanding the case back to the trial court to apply the correct standard and complete the necessary analysis as to whether Harris was entitled to a new trial.⁶² Before addressing the errors made by both the trial and appellate courts, Justice Colvin explained the law surrounding this issue and the standard that is to be applied in such cases.⁶³

A. Errors of the Trial Court—Presumptions and Standards of Proof

The court held that the trial court first erred in its conclusion that, because of the adoption of O.C.G.A. § 24-6-606(b), the presumption of prejudice given to a defendant is no longer valid and is not applied by

56. *Id.*

57. 309 Ga. 273, 845 S.E.2d 625 (2020).

58. *See generally id.*

59. *Id.* at 293, 845 S.E.2d at 642.

60. *Id.*

61. *Id.* at 294, 845 S.E.2d at 643.

62. *Harris II*, 314 Ga. at 51, 875 S.E.2d at 650.

63. *Id.* at 53–54, 875 S.E.2d at 651–52.

courts upon a showing of juror misconduct.⁶⁴ The trial court misconstrued the limits that Rule 606(b) places on jurors testifying about matters which would impeach their verdict. While Rule 606(b) places an almost complete ban on the ability for jurors to testify in regard to their deliberations and verdict, there are three explicit exceptions given in the rule, one of which is the ability to testify about the presence of extrajudicial prejudicial information being brought to the jury's attention. The evidence rule limits what type of juror testimony the court can hear in making its prejudice determination, but it has no bearing on the well-settled principle that a court must presume that the misconduct did prejudice the jury's verdict unless the State can overcome its burden to rebut this.⁶⁵ Therefore, the court held that the provision allowed the jurors to testify as to the existence of the extrajudicial information, but not to matters relating to the effect that the extrajudicial information had on their verdict.⁶⁶

In its second enumeration of the trial court's error, the Supreme Court of Georgia reasoned that the lower court applied the incorrect standard for the burden that the prosecution is required to overcome in order to establish that the misconduct was harmless or non-prejudicial.⁶⁷ The standard used by the trial court was "no reasonable probability" of harm, which is the typical standard applied when the error does not pertain to a constitutional issue.⁶⁸ However, as the court held, errors which arise from juror misconduct are constitutional issues and thus, the correct standard that should have been applied is "beyond a reasonable doubt."⁶⁹

B. Error of the Georgia Court of Appeals—Prejudice Over Sentencing

The Georgia Court of Appeals correctly recognized that the presumption of prejudice is given to the defendant when an error of juror misconduct arises, and that the prosecution bears the burden of proving beyond a reasonable doubt that the prejudice was harmless.⁷⁰ However, the Supreme Court of Georgia held that the Georgia Court of Appeals erred in concluding that the extrajudicial information in this case could not have prejudiced the verdict because it related to sentencing

64. *Id.* at 54, 875 S.E.2d at 652.

65. *Id.* at 54–55, 875 S.E.2d at 652.

66. *Id.* at 55, 875 S.E.2d at 652.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.* at 56, 875 S.E.2d at 653.

information as opposed to substantive law.⁷¹ The court's reasoning was based on its decision in *Beck*, where it vacated the trial court's denial of a motion for a new trial where the jurors considered sentencing information in deliberations and in reaching their verdict.⁷²

In addition to the *Beck* decision, the Supreme Court of Georgia based its decision on Georgia precedent and legislation which prohibits jurors from considering any sentencing issues while deciding the guilt or innocence of a criminal defendant.⁷³ The court quoted *Foster v. State*,⁷⁴ which noted that when the bifurcated trial system was created for felony offenses that, "separated the guilt-innocence phase of a trial from sentencing, the legislature provided that jurors were required to 'render a verdict of guilty or not guilty "without any consideration of punishment" before proceeding to sentencing the defendant."⁷⁵ Moreover, the court noted that the current system does not even give jurors the responsibility of deciding sentencing in felony cases, unless the death penalty is sought.⁷⁶

Justice Colvin also discussed the steps that courts have taken to ensure that jurors are not privy to information regarding sentencing, including the rule that trial courts shall not give the jury any instruction concerning possible punishment in a felony case before the question of guilt or innocence has been answered by the verdict.⁷⁷ In fact, the Georgia Suggested Pattern Jury Instructions contain an instruction that is routinely used to inform the jury of their strict duty to concern themselves with only the guilt or innocence of the defendant as opposed to sentencing.⁷⁸ The importance of this instruction being read to the jury

71. *Id.*

72. *Id.*

73. *Id.*

74. 306 Ga. 587, 832 S.E.2d 346 (2019).

75. *Harris II*, 314 Ga. at 56–57, 875 S.E.2d at 653.

76. *Id.* at 57, 875 S.E.2d 653.

77. *Id.*

78. 2 Council of Superior Court Judges of Georgia, Georgia Suggested Pattern Jury Instructions, § 1.70.20 (4th ed. 2022). Also consider § 0.01.00, which is given at the beginning of trial and preliminarily instructs jurors not to conduct any research on their own, not to visit the scene of the alleged crime, or refer to any document or book that was not admitted into evidence during trial. The instruction also forbids the use of Google and other internet services to learn about more facts of the case or legal terms, while also banning any jurors from accessing any form of news that discusses the case. Importantly, the preliminary instruction uses language referring to the jurors as "fair and impartial," which reaffirms the dangers to the defendant that arise due to juror misconduct of this nature. 2 Council of Superior Court Judges of Georgia, Georgia Suggested Pattern Jury Instructions, § 0.01.00 (4th ed. 2022).

and complied with by the jurors is so crucial that the Supreme Court of Georgia has held that the inability to comply with this rule may result in that juror's removal.⁷⁹

It is important to note, however, that the court's holding regarding the Georgia Court of Appeals' error does not mean that extrajudicial sentencing information will result in prejudice to the verdict in every situation.⁸⁰ It merely found error in the lower court's holding that this type of extrajudicial information could never be the type of prejudice that is inherently lacking due process.⁸¹ Nevertheless, the Georgia Court of Appeals' opinion was vacated and Harris's case was remanded to the trial court to decide, while applying the proper standard and procedure for testimony related to Rule 606(b), whether her motion for a new trial should be granted based on the juror misconduct.⁸²

V. IMPLICATIONS

While the decision in *Harris II* was based on a proper understanding of well-settled legal principles and did not involve an issue of first impression for the Supreme Court of Georgia, the significance of the ruling coupled with society's increasing reliance on technology presents a new responsibility for judges, attorneys, and citizens who serve as jurors. The Supreme Court of Georgia's holding explains that upon a showing of juror misconduct involving extrajudicial information in a criminal trial, the trial court has an absolute duty to presume that the information obtained by the juror or jurors harmed the defendant by prejudicing the verdict. This means that courts must be extremely diligent applying this presumption when the issue is raised in a criminal trial. Moreover, the courts must also ensure that the proper standard of proof is applied and met by the prosecution before they can deny a motion for a new trial. This standard is demanded not only by the opinion of the court in *Harris II*, but also by the constitutional principles in which the right to a fair trial by an impartial jury is founded.⁸³

The prevalence of cell phones with smart-phone capabilities such as Internet and social media access has created a heightened risk that jurors may ignore the judge's instruction not to consult any extrajudicial information because of this convenient method of research. As Justice Nels Peterson stated at the oral argument for *Harris v. State*, "jurors

79. *Harris II*, 314 Ga. at 57–58, 875 S.E.2d at 654.

80. *Id.* at 58, 875 S.E.2d at 654.

81. *Id.*

82. *Id.*

83. U.S. CONST. amend. VI.

these days are much more likely to seek out and readily obtain extrinsic information than may have been the case [] in the 1960s when you might have to go to the public library.”⁸⁴ Indeed, with the power of a cell phone, jurors have the ability to access and utilize a wide variety of information including substantive law, sentencing information, personal information about a defendant or victim, and even geographic information from sources such as Google Maps. This type of conduct is not only harmful because it involves a juror disobeying a trial court’s instruction to only use information presented before them at trial, but also—more dangerously—it allows a juror to place themselves into the roles of investigators, lawyers, and judges when they seek evidentiary, substantive, or even sentencing information.⁸⁵

The danger that a defendant faces is multiplied by the fact that, in order to invoke the presumption of prejudice and ensure that their fate was decided by a fair and impartial jury, they must first be made aware of misconduct relating to the presence of extrajudicial information in the deliberations. Absent an outside witness who informs an attorney or the court of such prohibited conduct, the defendant’s right to a fair trial ultimately boils down to the honesty and candor of a juror to confess to the misconduct. This is clearly a hefty gamble to take given that jurors are deciding the fate of an individual’s freedom.

So, what is the solution to this issue? Beyond removing a juror who engages in misconduct or granting a motion for a new trial, Georgia courts and legislators have yet to take a more creative and effective approach to remedy the issue. Georgia courts do have the power to hold a juror in contempt of court for “disobedience or resistance.”⁸⁶ That being said, there is little to no caselaw addressing the interpretation and scope of the contempt power in relation to jury misconduct. Georgia courts could look to the federal courts, which have used their contempt power in cases of juror misconduct arising from disobedience of commands by the court.⁸⁷ In *U.S. v. Juror Number One*,⁸⁸ the United States District Court for the Eastern District of Pennsylvania found a juror was guilty of criminal contempt for emailing another juror and expressing her view

84. Oral Argument at 4:40, *Harris v. State*, 314 Ga. 51, 875 S.E.2d 649 (2022) (No. S22G0018).

85. See 141 AM. JUR. 3d *Proof of Facts* § 5, Westlaw (database updated November 2022).

86. O.C.G.A. § 15-1-4(a)(3) (2022).

87. See *U.S. v. Juror Number One*, 866 F. Supp. 2d 442 (2011).

88. *Id.*

that the defendant should be found guilty on all counts.⁸⁹ The district court, exercising its power of contempt under 18 U.S.C. § 401,⁹⁰ found Juror Number One's actions had violated the court's orders, constituted criminal contempt, and warranted "a fine of \$1,000, which serves to vindicate the authority of the Court and to punish Juror Number One for her improper conduct."⁹¹ The court found justification for the sentence due to the responsibility of courts to "continually adapt" to the effects of technology and hold jurors in contempt for Internet related misconduct to convey "a public message that the judicial system cannot tolerate such behavior."⁹²

In the United Kingdom, the Criminal Justice and Courts Act⁹³ created a provision that prohibits jurors from obtaining extrajudicial information during the trial, sharing the improper information with other jurors, and engaging in behavior which reasonably shows that they are trying the issue on something other than what is presented by the court.⁹⁴ More importantly, however, the law makes it a criminal offense to engage in the described conduct while serving on a jury and it is punishable by a fine, imprisonment for up to two years, or both.⁹⁵ If the United Kingdom is taking such great measures to ensure the validity of verdicts and to protect the rights of those accused of a crime, should the United States not re-examine its approach to preventing jury misconduct? After all, it is illegal for a person to obstruct an officer from carrying out their lawful investigative duties and it is illegal to perjure oneself on the witness stand because those actions conflict with the preservation of justice. Why, then, has there been no liability for a juror who violates the instructions given to them on what information they are to consider during deliberations? If Congress or the state legislatures truly stand to represent the Constitution and the rights that are bestowed upon the people of the United States, a change should be made to the seriousness

89. *Id.* at 443. The juror had been dismissed on the second to last day of trial because of matters involving her employment. There was no objection from either party and Juror Number One was replaced with an alternate. When she was dismissed, the court instructed her not to discuss the case until it was completed. *Id.* at 444.

90. 18 U.S.C. § 401.

91. *Juror Number One*, 866 F. Supp. at 452–53.

92. *Id.* at 452 (quoting *U.S. v. Fumo*, 655 F.3d 288, 305 (3rd Cir. 2011)).

93. Criminal Justice and Courts Act 2015, c. 2, § 71 (UK), <https://www.legislation.gov.uk/ukpga/2015/2/contents> [<https://perma.cc/J5EN-ASWL>].

94. See K. Crosby, *Before the Criminal Justice and Courts Act 2015: Juror Punishment in Nineteenth-and Twentieth-Century England*, NEWCASTLE L. SCH. (Dec. 21, 2015), <https://ssrn.com/abstract=3091138> [<https://perma.cc/G26H-QXKF>].

95. See *id.*

by which jury misconduct issues are analyzed. Without clear guidelines regarding the trial court's ability to sanction or punish jurors engaging in misconduct, there will be little to no weight behind any attempt to maintain the legitimacy of criminal trials, resulting in a grave miscarriage of justice.