

Reported Colorado Decisions Construing CRE 606(b)

Colorado Supreme Court Decisions

- (1) *People v. Richardson*, 184 P.3d 755 (Colo. 2008) (not deciding whether CRE 606(b) applies when defendant “seeks to establish a verdict – in whole or in part – as to a charge on which the jury hung”).
- (2) *Kendrick v. Pippin*, 252 P.3d 1052, 1063-1064 (Colo. 2011) (motorist struck from behind sued second motorist; verdict for defendant; trial court denied plaintiff’s motion for new trial, and court of appeals affirmed; action of foreperson in calculating speed of defendant and sharing results with other jurors was not extraneous prejudicial information) (reversing denial of motion for new trial on other grounds), limited by *Bedor v. Johnson*, 292 P.3d 924 (Colo. 2013) (on other grounds).
- (3) *People v. Harlan*, 109 P.3d 616 (Colo. 2005) (CRE 606(b) “strongly disfavors any juror testimony impeaching a verdict, even on grounds such as mistake, misunderstanding of the law or facts, failure to follow instructions, lack of unanimity, or application of the wrong legal standard”) (trial court vacated death sentence in capital case and awarded life imprisonment; Supreme Court approves because juror brought Bible to deliberations with handwritten notes and other extraneous materials with passage commanding death penalty for murderers, and pointed out these passages to another juror; these amounted to extraneous prejudicial information).
- (4) *Hall v. Levine*, 204 P.3d 222 (Colo. 2005) (in medical malpractice suit, jury returned unanimous verdict in favor of doctor; court erred in awarding new trial on basis of juror statements that verdict was not unanimous; after jury was polled, CRE 606(b) precludes affidavits divulging mental processes, even if they “show that the jury misunderstood the law or facts, failed to follow instructions, or applied the wrong legal standard”; similarly jurors are estopped after court has received verdict from impeaching it) (jurors failed to follow instructions that verdict must be unanimous; post verdict affidavits would be inadmissible, and court cannot use them as basis for recalling jury; fact that jury was not polled doesn’t matter).
- (5) *People v. Wadle*, 97 P.3d 932 (Colo. 2004) (after guilty verdict convicting mother of child abuse resulting in death, jurors indicated that they had done internet research into the drug Paxil, after having requested Physician’s Desk Reference and been told that they could not use reference materials of any kind; day after verdict two jurors contacted court and reported that third juror had downloaded definition of Paxil from internet; court refused new trial; reviewing court properly awarded new trial; exposure to information or influences outside trial process may require reversal of conviction, and defendant need not show “actual prejudice,” and proper test under CRE 606(b) is “objective,” asking what effect such juror

misconduct would have on a “typical jury” and whether there is a “reasonable possibility” that the extraneous contact or influence affected the jury).

- (6) *Stewart ex rel. Stewart v. Rice*, 47 P.3d 316 (Colo. 2002) (in personal injury suit arising out of auto accident, affidavits submitted by defense indicating that jury had made error in entering amounts on jury form were inadmissible; verdict was for \$696,000 in noneconomic damages and \$440,000 in economic damages and \$1,136,000 in physical impairment damages; the latter was the sum of the first two; affidavits indicating that jury didn’t mean to enter separate verdict for physical impairment was inadmissible; standard jury instruction allowing post-verdict contact does not allow abuse of jury system that occurred here; CRE 606(b) is similar to federal counterpart, so federal authority can provide “guidance” on applying the Colorado counterpart; CRE 606(b) “has three fundamental purposes: to promote finality of verdicts, shield verdicts from impeachment, and protect jurors from harassment and coercion”; clerical error on jury form must be readily ascertainable: “Clerical error in a verdict form does not include an alleged error that either alters the legal effect of the jury’s verdict, see *Chalmers*, 59 Ill.Dec. 76, 431 N.E.2d at 365, or addresses the jury’s misunderstanding or misapplication of the court’s jury instructions. CRE 606(b) bars such an inquiry. See *Santilli v. Pueblo*, 184 Colo. 432, 433-34, 521 P.2d 170, 171 (1974).”).
- (7) *People v. McCoy*, 764 P.2d 1171, 1177 (Colo. 1988) (cannot use juror affidavit to show that verdict of conviction rested on speculation).
- (8) *People v. Garcia*, 752 P.2d 570, 582-583 (Colo. 1988) (refusing relief from conviction on drug offenses; defendant could show that juror had read newspaper article stating that defendant had come to Colorado from Florida to sell drugs to raise bail money from another; in attacking verdict, defendant must offer competent evidence and show that it provides grounds to set aside verdict; juror said article was discussed in jury room; defendant was not “impermissibly prejudiced,” and evidence of guilt was overwhelming) (conviction upheld).
- (9) *Neil v. Espinoza*, 747 P.2d 1257, 1261 (Colo. 1987) (wrongful death suit arising out of police shooting; when polled, one juror indicated that amount of damages was determined by majority vote; judge discharged jury; affidavit of this juror indicated that he felt that compensatory damages should be higher; judge then entered judgment on verdict; reviewing court reverses, orders new trial; court erred in entering judgment when poll indicated lack of unanimity; judge also erred in consulting affidavit in determining that defendant was not harmed because holdout juror wanted to award higher damages; new trial awarded).
- (10) *Wiser v. People*, 732 P.2d 1139, 1141-1142 (Colo. 1987) (convictions for burglary and felony menacing; juror affidavits indicated that juror looked up definition of burglary and that juror learned that numbers on instructions indicate who submitted them; both requirement to show prejudice and presumption of prejudice are problematic because evidence is hard to obtain and proof of actual prejudice is inadmissible; avoiding these problems, trial court should apply an “objective test” and “determine what effect juror misconduct would have on a typical jury”) (here

reference to theft in definition of burglary “confused” juror, which could only benefit defendant; information about source of instruction could not affect verdict).

- (11) *People v. Collins*, 730 P.2d 293 (Colo. 1986) (conviction for first degree assault; defense claims jurors engaged in misconduct, as (i) five didn’t follow instructions requiring unanimous verdict, and all failed to make finding of serious bodily injury, and (ii) one juror said coercive tactics were employed against her; trial court polled jury; when there is unanimous concurrence in verdicts, as there was here, court shall not then consider affidavits going to question of unanimity, as they are inadmissible under CRE 606(b)).
- (12) *Wharton v. People*, 90 P.2d 615 (Colo. 1939) (pre-Rules decision reversing conviction that had led to death sentence; affidavit by one juror said he held out for life imprisonment, and that other jurors “became abusive in their language, threatening in their manner, and coercive in their conduct,” including accusations that holdout had been “fixed” or “bought off”; there was also “cursing and swearing” and “scoffing and slurring” and “brow-beating and haranguing” leading holdout to become “physically weak and exhausted” to the point that he gave in, but later went to the defense lawyers “of his own volition and voluntarily”) (verdict violated rights of defendant to jury trial under Colorado Constitution; case remanded to reconsider defense new trial motion).

Colorado Court of Appeal Decisions

- (1) *Malpica-Cue v. Fangmeier*, ___ P.3d ___ (Colo. App. 2017) (foreman’s placement of \$20,873,38 on verdict form where he should have written \$0 as award for physical impairment or disfigurement, which was the type of mistake or clerical error that fits exception for “a mistake in entering the verdict” on the form).
- (2) *People v. Johnson*, ___ P.3d ___ (Colo. App. 2017) (can’t use juror affidavit to prove that jury considered certain evidence that it was told to disregard).
- (3) *Fuller v. Arkansas Valley Correctional Facility*, 2017 WL 219330 (D. Colo. 2017) (one purpose of CRE 606(b) is to “protect jurors from harassment and coercion”) (court to instruct jurors that it’s up to them whether to talk to anyone about the case).
- (4) *Johnson v. VCG Restaurants Denver, Inc.*, ___ P.3d ___ (Colo. App. 2017) (cannot use juror affidavit to rebut presumption of prejudice from order allowing alternate juror to participate in deliberations despite objection by party).
- (5) *People v. Clark*, 370 P.3d 197 (Colo. App. 2015) (rule allows proof that juror conducted experiment to see whether one could tell the color of cars passing on Speer Boulevard at night from apartment building) (remanding for hearing).
- (6) *People v. Doubleday*, 359 P.3d 595 (Colo. App. 2012) (can ask jury on special interrogatory before it deliberates to indicate whether, if it finds defendant not guilty, the reason is that prosecution failed to disprove element of duress raised in defense or whether prosecutor failed to prove element of crime), reversed on other grounds, *Doubleday v. People*, 364 P.3d 193 (Colo. 2016).
- (7) *People v. Garrison*, 303 P.3d 117, 125-126 (Colo. App. 2012) (cellphones were admitted in evidence; both sides thought batteries were dead; jurors turned on cellphones

and retrieved messages and pictures; this did not count as extraneous prejudicial information).

- (8) *People v. Holt*, 266 P.3d 442, 444 (Colo. App. 2011) (reversing order for new trial, which trial court awarded on basis of juror affidavit indicating that another juror had told jurors that penalty for vehicular eluding was a mere slap on the wrist; this was not extraneous prejudicial information; it was based on personal knowledge obtained before trial).
- (9) *People v. Juarez*, 271 P.3d 537, 544-545 (Colo. App. 2011) (CRE 606(b) “protects the integrity of the jury room from coercion, potential harassment, or outside pressure, while the jury deliberates and during polling”) (rule bars inquiry into the question whether jury was “confused” about the law; if no exception to CRE 606(b) applies, court “may not consider juror affidavits or testimony regarding a juror’s alleged confusion, mistake, or misinterpretation of the law”) (trial court erred in questioning jurors as verdict was delivered and denying defense motion for new trial).
- (10) *People v. Robles*, 302 P.3d 269, 282-283 (Colo. App. 2011) (affirming conviction for felony murder, and rejecting defense claim that trial court failed properly to investigate juror misconduct; under CRE 606(b), court can investigate bailiff’s report that juror had approached her and asked to speak with judge because juror “was having difficulties with some of the other jurors,” followed by a question from jury asking permission to switch forepersons; the foreperson said some jurors were “not comfortable” and were worried about “retributions”; foreperson offered to remain if changing would cause too much trouble or delay, and court declined to investigate further; this inquiry “sufficiently established that none of the jurors had been threatened, attacked, or abused” so court did not abuse its discretion in refusing to investigate further) (court cites *Mollaun* for proposition that jurors can prove overt coercive acts only if they “rise to the level of continuous violent, abusive, and profane language and conduct”; court cites *Rudnick* for proposition that coercion requires “more than expressions of frustration, impatience, annoyance, or empty threats”; court cites *Ferrero* for proposition that court cannot inquire into juror’s physical condition as it affects her “ability to hold out against the other jurors’ yelling” and court cites *Harrison* for point that testimony describing fear on part of juror is improper inquiry into thought processes).
- (11) *People v. Mollaun*, 194 P.3d 411, 416 (Colo. App. 2008) (in drug trial, juror “shut down, became isolated, and began to draw” and when confronted said “she didn’t care anymore” and “locked herself in the bathroom”; later she came out and seemed “agreeable to going forward with deliberating”; information did not show that juror refused to deliberate or was unable or unwilling to reach her own decision; “courts may consider evidence of objective circumstances and overt coercive acts by members of a jury only if the alleged coercive acts rise to the level of continuous violent, abusive, and profane language and conduct threatening or amounting to physical violence against a juror”), *cert den.*, 2008 WL 55897537 (Colo. 2008).

- (12) *Hanna v. State Farm Ins. Co.*, 169 P.3d 257, 269 (Colo. App. 2007) (jury may “change or modify its verdict until the trial court accepts the verdict and discharges the jury,” but court “may not recall the jurors for this purpose once they leave the court’s control”) (citing *David DeMuro* and CRE 606(b)).
- (13) *Garhart ex rel Tinsman v. Columbia/HealthONE, L.L.C.*, 158 P.3d 512, 518 (Colo. App. 2007) (to determine value of future damages from resent value presented in verdict, court would have to determine “which discount rate the jury used to calculate present value verdict from its findings of future damages,” but it is “inappropriate for the trial court to delve into the process the jury used to arrive at its present value calculations”).
- (14) *Christel v. EB Engineering, Inc.*, 116 P.3d 1267, 1271 (Colo. App. 2005) (CRE 606(b) barred juror testimony that jurors were confused by verdict forms, and that jury disregarded court’s instructions and made improper assumptions about city’s absence from trial; these claims did not fit either of the exceptions in CRE 606(b) and so were barred and could not be considered in plaintiff’s new trial motion).
- (14) *Black v. Waterman*, 83 P.3d 1130, 1138 (Colo. App. 2003) (admitting juror affidavit indicating that during voir dire juror M indicated agreement with sentiment expressed by third juror that women who couldn’t take harassment at work should find new job, indicating possibility that M concealed her beliefs during voir dire).
- (15) *People v. Rivers*, 70 P.3d 531 (Colo. App. 2002) (court could declare mistrial without taking juror statement or polling individual jurors; here reviewing court refuses to consider juror statement that vote was 11 to 1 for acquittal; CRE 606(b) serves interest in “preserving the freedom and integrity of jury deliberations, stability in the judicial process, and finality of verdicts and of protecting jurors against annoyance, embarrassment, and coercion”).
- (16) *Simpson v. Darwin Lee Stjernholm, DC*, 985 P.3d 31 (Colo. App. 1998) (reversing judgment entered on jury verdict in favor of chiropractor; judge erred in questioning juror who indicated that she thought plaintiff was hurt by defendant but that it wasn’t necessarily proved and that she thought she had no choice but to agree with verdict; judge violated CRE 606(b); if FRCP 47 allows questioning when juror’s response is equivocal, this juror’s response was “clear and unequivocal,” and court’s choice when response is unclear is to discharge jury or send out for further deliberations).
- (17) *Munoz v. State Farm Mut. Auto Ins. Co.*, 968 F.3d 126, 132 (Colo. App. 1998) (can’t prove that damages were excessive by juror affidavit that jury was trying to award attorney fees to plaintiff).
- (18) *People v. Rudnick*, 878 P.3d 16, 21 (Colo. App. 1993) (CRE 606(b) allows juror testimony “if there have been external influences on the jury,” and Colorado recognizes exception allowing proof of “jury misconduct,” which may include “threats or coercion by fellow jurors,” in which case court “should conduct a hearing” to see whether it affected the verdict; this approach is consistent with goal of CRE 606(b) to protect juror privacy; but here juror’s testimony “about her feelings of being mentally abused and about her inability to stand up to the other

juror's aggressive behavior constituted improper testimony" about her thought processes under the Rule; here there was "no evidence of threats, abuse, or any coercion beyond the verbal, aggressive behavior of one juror").

- (19) *People v. Ferrero*, 874 P.2d 468, 474 (Colo. App. 1993) (trial court refused to consider affidavit in which juror said "other jurors yelled at her and that, because of an illness, she was coerced into voting to convict" for first degree murder; at hearing she described her symptoms and said she "could not take it any longer," and trial court concluded that testimony and affidavit were inadmissible; trial court was correct to exclude affidavit "about her physical condition and its effect on her ability to hold out," and record does not support claim that the pressure in this case "rose to the level of that" in *Wharton* case, which involved "hours of continuous violent, abusive, and profane language and conduct" and alleged threats of "physical combat" against a holdout juror; here there was no evidence of threats, abuse or coercion beyond "yelling").
- (20) *People v. Fox*, 862 P.2d 1000, 1003 (Colo. App. 1993) (ordering new trial after defendant was convicted for reckless manslaughter in shooting death of acquaintance, where jury foreman went to a bar in evening and talked to gunsmith about mechanics of a .25 caliber pistol, which was weapon involved in this case; investigator hired by defense stated that six or seven jurors were aware of some information that foreman gleaned; key issue was self-defense, and information could have been used to impeach credibility of defendant and defense witnesses).
- (21) *Montrose Valley Funeral Home, Inc. v. Crippin*, 835 P.2d 596, 598-600 (Colo. App. 1992) (ordering new trial where jurors read transcript of deposition that went to jury room by mistake; only 45 of 149 pages had been read into evidence, and additional material in transcript "related to issues in the case and was arguably prejudicial" to plaintiff) (reversing verdict for defendant).
- (22) *Harper v. People*, 817 P.2d 77, 83-85 (Colo. 1991) (reversing conviction for sexual assault on child; potentially prejudicial news reports appeared during trial; trial court declined to conduct inquiry when defense brought these to attention of judge; CRE 606(b) "permits juror testimony about exposure to extraneous prejudicial information," and ban on defense contact with family members of jury hampers ability to procure independent evidence of exposure to the information; presumption that jurors follow instructions "does not adequately take into account either the likelihood that a juror could acquire information . . . or the difficulty of discovering" exposure; court was obliged to make inquiry of jury).
- (23) *Davis v. Lira*, 817 P.2d 539, 543 (Colo. App. 1991) (drawing on federal authorities construing FRE 606(b), court here concludes that CRE 606(b) precludes showing quotient verdict), *reversed on other grounds*, *Lira v. Davis*, 832 P.2d 240 (Colo. 1992).
- (24) *Destination Travel, Inc. v. McElhanon*, 799 P.2d 454, (Colo. App. 1990) (ordering new trial in suit by management company for wrongful rescission of joint operating agreement; jurors may use common knowledge and observations in life, but cannot rely on "specialized factual knowledge they have learned from outside

the record which bears on relevant factual issues”; here jurors may “made improper assumptions” about pay of employees in determining damages; amount of damages is “often imprecise and jurors are expected to make their best estimation,” but here affidavits by two jurors said another juror “had provided members of the jury with estimates, based on prior business knowledge and experience, of what he assumed would have been the appropriate salaries for several of plaintiff’s employees,” and court should have held hearing to assess possible juror misconduct).

- (25) *Ravin v. Gambrell By and Though Eddy*, 788 P.2d 817, 821-822 (Colo. 1990) (in medical malpractice suit leading to verdict for defendant, juror talked with bailiff during deliberations and asked what could happen if they couldn’t reach verdict, and bailiff said they could be “confined for a period of two weeks,” a comment overheard by other jurors; although CRE 606(b) reinforces “finality of jury verdicts” and protects “the sanctity of jury deliberations” and safeguards “the privacy of jurors” and protects against “harassment by a losing party,” still in cases where deliberations have been “substantially undermined because of fundamental flaws in the deliberative process itself” courts must weigh these policies “against the overriding concern that parties to the judicial process be assured of a fair result”) (bailiff’s comments “did have a reasonable possibility of affecting the jury verdict” so a new trial is necessary).
- (26) *People v. Harrison*, 746 P.2d 66, 68 (Colo. App. 1987) (in arson trial, defense could use affidavit to prove that juror saw defendant and three men at juror’s place of work during trial, but could not use juror’s affidavit to prove that juror felt afraid; defendant was not entitled to new trial, as he cannot “claim prejudice resulting from his own conduct as a ground for setting aside the verdict”).
- (27) *People v. Staggs*, 740 P.2d 21, 23 (Colo. App. 1987) (reversing sexual assault conviction; during jury recess, juror conducted her own research to determine time needed to drive between two residences, and informed other jurors; her affidavit reflected improper information and was admissible under CRE 606(b); defense claimed alibi, so “timing of the events on the evening in question was critical,” and without the information learned from the juror the jury might have determined the issue of credibility against the victim) (new trial ordered).
- (28) *People v. Black*, 725 P.2d 8, 9 (Colo. App. 1986) (refusing to set aside conviction for sexual assault despite defendant’s claim that two jurors said they would not have voted for guilt “but for the coercion imposed” by other jurors; one juror said she was “talked into” agreeing to guilty verdict and that she was “just mentally exhausted” and “couldn’t argue with these people any more,” and the other juror also “just couldn’t argue any more,” and both “doubted defendant’s guilt and immediately regretted the verdict”; judge found no “abuse or threats,” and reviewing court agrees that the pressure exerted on these jurors did not rise to level in *Wharton*, which said one can impeach jury verdict by proving that a juror was threatened by other jurors, in paragraph commenting that CRE 606(b) “codifies the previously existing common law rule” limiting inquiry into jury

- verdicts to “narrowly circumscribed circumstances) (also citing *Kading* for proposition that one can inquire into “scrivener’s error by jury”).
- (29) *People v. Thornton*, 712 P.2d 1095, 1099-1100 (Colo. App. 1985) (notification by juror that jury “misunderstood the court’s instructions” did not warrant hearing; cannot impeach verdict by affidavits on this point “or other matters which involve the subjective understanding of the jurors”), *reversed on other grounds*, *Thornton v. People*, 716 P.2d 1115 (Colo. 1986).
- (30) *Kading v. Kading*, 683 P.2d 373, 376 (Colo. App. 1984) (can correct a “clerical mistake in filling out the dollar amounts of the verdict forms”).
- (31) *T.S. By Pueblo County Dept. of Social Services v. G.G.*, 679 P.2d 118 (Colo. App. 1984) (in paternity suit, can show that jury foreperson reported to others what she read at home on lunch break in a “pre-med” textbook belonging to her son, about HLA testing and paternity; although CRE 606(b) blocks testimony on “the effect upon their deliberations of improper matters,” still “an examination of the improper information itself” is allowed; here the evidence communicated by the foreperson could have affected the jury’s verdict) (defendant wins new trial).
- (32) *People v. Cornett*, 685 P.2d 224, 226 (Colo. App. 1984) (after conviction for burglary, awarding new trial because jurors read newspaper stories about case in violation of court’s instructions; improper communications to jurors on punishment or sentencing are “presumptively prejudicial”) (under CRE 606(b), can prove improper influence).
- (33) *People v. Crespin*, 682 P.2d 58, 60 (Colo. App. 1984) (rejecting claim by prosecutor that reversal was precluded because two jurors testified that jury “did not consider extreme indifference murder as a factor in arriving at its verdict,” since such testimony related to jury’s mental processes and is inadmissible under CRE 606(b)), *reversed on other grounds*, *Crespin v. People*, 721 P.2 688 (Colo. 1986).
- (34) *People v. Graham*, 678 P.2d 1043 (Colo. App. 1983) (in challenge to conviction for sexual assault and related offenses, cannot consider juror affidavits indicating that jurors considered “facial expressions and demeanor of the defendant and the defendant’s failure to testify,” as such evidence is precluded by CRE 606(b)).
- (35) *Rome v. Gaffrey*, 654 P.2d 333, 334 (Colo. App. 1982) (jury returned verdict of \$200,000 for plaintiff, with findings that plaintiff was 47% responsible and defendant was 53% responsible; judgment was entered for plaintiff for \$106,000 [53% of \$200,000]; all six jurors executed affidavits saying they thought their verdict would give plaintiff \$6,000 [54% minus 47% equals 6%?]; trial ct gave plaintiff choice between remittitur to \$6,000 or new trial; reviewing court here reverses; affidavits “show that the jurors were confused about the effect of their verdict, which confusion was part of their mental processes,” and were inadmissible under CRE 606(b)).

Tenth Circuit Opinions

- (1) U.S. v. Henderson, 564 Fed. Appx. 352 (10th Cir 2014) (cannot show that juror told foreman he had made mistake in agreeing to guilty verdict; foreman said form was made out and couldn't be changed; juror did not dissent when polled; defendant didn't argue that any specific exception to FRE 606(b) applied).
- (2) U.S. v. Cornelius, 696 F.3d 1307, 1325-1326 (10th Cir. 2012) (can't use juror affidavit to prove antigang bias; juror typed note to prosecutor during deliberations indicating possible antigang bias, referring to them as a "cancer" on society; cannot show content of note).
- (3) Fletcher v. Hartley, 2011 WL 1843316 (D. Colo. 2011) (denying habeas corpus relief to person convicted of robbery in state court, based on argument that juror's falling asleep ["nodding off"] during trial violated defendant's sixth amendment rights).
- (4) U.S. v. Shultz, 2008 WL 4787564 (D. Colo. 2008) (invoking FRE 606(b) in rejecting defense motion to interview trial jurors to see whether testimony by D would alter the outcome of the trial if it had been presented to jury).
- (5) Cook v. Rockwell International Corp., 428 F.Supp.2d 1152, 1154 (D. Colo. 2006) (defendants in civil action were not entitled to interview juror who was excused in order to determine whether she was "a dissenting juror who may have become incapacitated and left the jury as a result of undue influence brought to bear against her during the deliberations process by other jurors") (relying on FRE 606(b)).
- (6) Marquez v. City of Albuquerque, 399 F.3d 1216 (10th Cir. 2005) (in arrestee's suit against city and cop under §1983 alleging excessive force, plaintiff appeals from judgment for defendants; proof that one juror "was holding herself out as an expert in police dog training" and that she told others that police dogs don't bite unless suspect flees, that injuries suffered by plaintiff were not serious, and that police dogs don't bite the first part of the body they come across; juror stated these things about other juror in note to the judge; what this expert juror was saying reflected her "personal experience with police dogs," which does not constitute extraneous prejudicial information) (court also considers claim that this same juror lied on voir dire but concludes that this point is not proven).
- (7) U.S. v. Duran-Salazar, 123 Fed.Appx. 946 (10th Cir. 2005) (FRE 606(b) bars proof that juror in this case said, in unrelated voir dire in another case, that "her experience in the present case was very difficult" and everyone was against her and the judge demanded a unanimous opinion so she had to go along even though she didn't believe it).
- (8) U.S. v. Payne, 58 Fed.Appx. 397 (10th Cir. 2003) (affirming conviction despite proof that court security officer told juror that deputy marshals were guarding defendant).
- (9) Vigil v. Zavaras, 298 F.3d 935, 940 (10th Cir. 2002) (juror said he was familiar with areas where relevant houses were located, and it would only have taken defendant a couple of minutes to travel from one to another; this was outside information, and question was whether it substantially influenced verdict; here evidence

supporting conviction was fairly strong, so the new information did not have a substantial and injurious effect).

- (10) *Robinson v. Gibson*, 35 Fed.Appx. 715 (10th Cir. 2002) (denying habeas corpus relief from Oklahoma murder conviction and death sentence of black man; refusing to consider affidavit that only black juror, who had been holdout against death sentence, was “physically threatened and racially intimidated” during deliberations,” and refusing to recognize unwritten exception to FRE 606(b) for juror testimony that cannot be excluded without violating plain principles of justice).
- (11) *Carte v. Gibson*, 27 Fed. Appx. 934 (10th Cir. 2001) (in challenge to adequacy of defense representation, refusing to consider juror affidavit that defendant made “a poor appearance before the jury”).
- (12) *Unit Drilling Co. v. Enron Oil & Gas Co.*, 108 F.3d 1186, 1191 (10th Cir. 1997) (can ask jury to clarify an ambiguous verdict before jury is discharged).
- (13) *U.S. v. Voigt*, 877 F.2d 1465, 1469 (10th Cir. 1989) (can’t use juror affidavit to show that jury convicted because of defendant’s failure to take the witness stand).
- (14) *Eastridge Development Co. v. Halpert Associates, Inc.*, 853 F.2d 772, 783 (10th Cir. 1988) (verdict stated that E was 20% responsible and had been damaged in amount of \$208,000, which was “exactly 80% of the amount of damages” that E claimed; counsel for E spoke to jurors, with court’s permission, and found that jury “had mistakenly deducted 20% from its verdict,” and court corrected it; reviewing court concludes that FRE 606(b) allows amendment “to reflect the jury’s true decision”).