

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO.: 3:16-cr-93-J-32JRK
	)	
CORRINE BROWN,	)	
	)	
Defendant.	)	
_____	)	

MOTION FOR NEW TRIAL

COMES NOW Defendant, Corrine Brown, by and through her undersigned counsel and, pursuant to Rule 33, Federal Rules of Criminal Procedure, moves this Honorable Court for a new trial. In support of this motion, Ms. Brown states the following.

Rule 33 provides that a court may grant a new trial if justice requires. During deliberations, Juror 13 said the holy spirit had told him that Ms. Brown was not guilty. The Court found that the holy spirit was an external force, and dismissed the juror. After Juror 13 was dismissed, Ms. Brown was found guilty. The Court's finding that the holy spirit is an external force is not supported by the record. There is a substantial possibility the holy spirit was actually the juror's own mind or spirit¹ telling him that one or more witnesses had not testified truthfully. Therefore, justice requires that Ms. Brown be granted a new trial.

¹ Webster's College Dictionary 1290 (1991) defines "spirit" as "the incorporeal part of humans, or an aspect of this, as the mind or soul."

FACTS AND PROCEDURAL POSTURE

Ms. Brown was tried for mail and wire fraud, and other related offenses. After about two days of deliberations, Juror 8 wrote a letter to the Court stating that Juror 13 had said: "a higher being told me Corrine Brown was not guilty on all charges." A 20, 26.² However, she said that Juror 13 had been deliberating, and that his comment about the holy spirit was not interfering with the deliberations. A 22.

Juror 13 told the Court that his religious beliefs were not interfering with his ability to decide the case based on the Court's instructions and the evidence. A 37. He said he had followed the evidence, and that he was going to make a decision based on "what I think and believe." A 38.

Juror 13 said he had prayed, and that he had received "information" from his father in heaven. A 39. The Court asked whether he meant he had received "guidance" from his father in heaven. The juror concurred. A 39. He said he had been receiving guidance throughout the case. A 39.

The Court asked Juror 13 whether he was basing his decision only on the evidence, and whether he had been following the Court's instructions, and the juror said he was. A 40. He said, "my religious beliefs are going to the testimonies of the

² "A" refers to the attached appendix, followed by the page number.

people given here, which I believe that's what we're supposed to do, and then render a decision on those testimonies and the evidence presented in the room." A 40.

When the juror was excused from the courtroom, the prosecutor argued that the juror was not following the Court's instructions. A 41. The Court then proposed to ask the juror whether he had said, specifically: "a higher being told me that Corrine Brown was not guilty on all charges." A 44. The Court said, "I think I would also want to ask this juror whether he's been following the court's instructions about fully considering the evidence with the other jurors and discussing the case" A 45. The prosecutor said: "I think we all know what the answer is going to be to question two. I don't think that's a useful question." A 45.

The Court agreed to omit question two, called the juror back into the courtroom, and asked question one. A 48. The juror said he had indeed made the statement. A 49. The prosecutor then requested a sidebar, and suggested that the questioning stop there. A 49. The Court stopped the questioning, excused the juror from the courtroom, and announced its decision.

The Court said, "Juror 13, very earnest, very sincere, I'm sure believes that he is trying to follow the court's

instructions, I'm sure believes that he is rendering proper jury service, but, upon inquiry and observing Juror No. 13, there is no question that he has made statements that he is, quote, receiving information from a higher authority as part of his deliberative process" A 56.

The Court said, "it's not that the person is praying for guidance so that the person can be enlightened, it's that the higher being -- or the Holy Spirit is directing or telling the person what disposition of the charges should be made." A 57. The Court said, "this statement by the juror, which he forthrightly admitted to, and which was accurately, apparently, recounted by Juror No. 8, who brought this to our attention, is a disqualifying statement." A 57. It said that Juror 8 was "not able to deliberate in a way that follows the law and the instructions that the Court gave to him." A 58.

The Court added: "I want to be very clear that I am drawing a distinction between someone who's on a jury who is religious and who is praying for guidance or seeking inspiration, or whatever mode that person uses to try to come to a proper decision, from this situation, where the juror is actually saying that an outside force, that is, a higher being, a Holy Spirit, told him that Ms. Brown was not guilty on those charges.

And I think that's just an expression that's a bridge too far, consistent with jury service as we know it." A 58.

The Court said, "not only did Juror No. 13 make this statement, but it appears that he continues to believe that he is being told by a higher power how he ought to proceed in these deliberations" A 59. The Court said this was "not a willful violation by Juror No. 13, but a violation of the Court's instructions . . .," nonetheless. A 59.

Finally, the Court said, "let me make the proper finding here so that there is no doubt about it -- that this juror is being excused because the Court is finding no substantial possibility that he is able to base his decision only on the evidence and the law as the court gave it to him in the instructions and that he is using external forces to bring to bear on his decision-making in a way that's inconsistent with his jury service and his oath." A 59. Accordingly, the Court dismissed Juror 13, and replaced him with an alternate. A 60. After Juror 13 was dismissed, Ms. Brown was found guilty. A 60.

DISCUSSION

- I. There is a substantial possibility the holy spirit was actually the juror's own mind or spirit telling him that one or more witnesses had not testified truthfully.**

Under the Sixth Amendment, a defendant is entitled to a jury of his peers, and to a unanimous verdict. See Lowenfield

v. Phelps, 484 U.S. 231, 241 (1988). Accordingly, a court may not dismiss a dissenting juror, during jury deliberations, unless there is no substantial possibility that her dissent is based on the sufficiency of the evidence. See United States v. Abbell, 271 F.3d 1286, 1301 (11th Cir. 2001), and United States v. Godwin, 765 F.3d 1306 (11th Cir. 2014). Because of the danger that a dissenting juror might be dismissed under the mistaken view that she is engaging in impermissible nullification, the court must perform a tough legal test before dismissing a dissenting juror, during jury deliberations. Abbell, at 1302. The court must find, beyond a reasonable doubt, that the juror's dissent is not based on the sufficiency of the evidence. Id.

Here, the Court cited Godwin and Abbell as authority for dismissing Juror 13. But Godwin and Abbell are distinguishable. In Godwin, eleven jurors testified that the twelfth juror was refusing to follow the court's instructions. The court found that the juror was, in fact, refusing to follow its instructions, and dismissed him. The defendant was found guilty, and he appealed. Similarly, in Abbell, eleven jurors testified that the twelfth juror was refusing to follow the court's instructions. Again, the court found that the juror was, in fact, refusing to follow its instructions, and dismissed

him. The defendant was found guilty, and he appealed. The Eleventh Circuit affirmed both convictions because the trial courts' findings, that the jurors were refusing to follow its instructions, were supported by the record.

A. The dismissal of Juror 13 during jury deliberations, after he had revealed his "not guilty" verdict, violated Ms. Brown's Sixth Amendment right to a unanimous verdict.

In this case, none of the jurors testified that Juror 13 was not following the Court's instructions. On the contrary, Juror 8 testified that Juror 13 was deliberating as instructed. She said that Juror 13's statement about the holy spirit was not interfering with the deliberations.

It is not unusual for some people to refer to their own spirit, or to the holy spirit, as the source of their opinions regarding another person's credibility. This is what Juror 13 did. He said "my religious beliefs are going to the testimonies of people given here, which I believe that's what we're supposed to do, and then render a decision on those testimonies and the evidence presented in the room." A 40. Juror 13 did not say that the holy spirit is an external force. He testified that he was following the Court's instructions, and that the holy spirit was not interfering with his ability to render a verdict based on the evidence. A 37, 38. He said he had followed the evidence, and that his decision would be based on "what I think

and believe." A 38. He emphasized that his "not guilty" verdict was based on his own assessment of the witnesses' credibility. He said, "I know the truth when the truth is spoken." A 38, 39.

There is a substantial possibility the holy spirit was actually the juror's own mind or spirit telling him that one or more witnesses had not testified truthfully. The record does not show, beyond a reasonable doubt, that Juror 13's "not guilty" verdict, was not based on the sufficiency of the evidence. Accordingly, the dismissal of Juror 13 violated Ms. Brown's Sixth Amendment right to a unanimous verdict, and justice requires a new trial.

B. The dismissal of Juror 13 during jury deliberations, for his comment that the holy spirit had told him that Ms. Brown was not guilty, violated Ms. Brown's Sixth Amendment right to a jury of her peers.

Juror 13 testified that the holy spirit had told him that Ms. Brown was not guilty. He explained that what he meant was that he had received "guidance" from the holy spirit. A 39. The Court noted that "there's nothing wrong with praying for guidance" from the holy spirit. A 45. If there is nothing wrong with praying for guidance from the holy spirit, then there can be nothing wrong with receiving guidance from the holy spirit.

In Robinson v. Polk, 444 F.3d 225 (4th Cir. 2006), Robinson appealed the district court's denial of his habeas petition. He claimed that the presence of a Bible in the jury room during deliberations violated his Sixth Amendment rights. The Fourth Circuit held that the District Court's denial of relief was not an unreasonable application of clearly established federal law. Judge Wilkinson's concurring opinion, in denying a petition for rehearing *en banc*, is instructive. He noted that it would not be appropriate to "presume that the Bible is a replacement for, rather than a reminder of, the individual's oath to uphold and apply the law." He went on:

Beyond emphasizing the serious nature of jury deliberations, the Bible can also provide a juror with the sustenance of faith at a difficult or even anguished time. For some jurors, daily Bible affirmation, or simply having a Bible nearby, constitutes a crucial aspect of personal identity. And even someone who does not frequently consult the Bible may desire one when faced with the heavy burden of selecting between a lifetime of incarceration or a sentence of death. The law need not deny the implements of faith to people when they need them the most. For those who find refuge in its teachings, the Bible can provide the strength to impose whatever punishment the law compels.

Our legal system would do a disservice to Americans of faith by presupposing that the consolation they find in the Bible would affect their impartiality as jurors. Jury service is not antithetical to religious belief, and jurors need not check the

objects of their faith at the courthouse door. We would not, for example, require removal of rosary beads or a yarmulke or a nun's habit as an incident of jury service. Such accouterments bespeak devotion, not prejudgment. To ask that jurors become fundamentally different people when they enter the jury room is at odds with the idea that the jury be "drawn from a fair cross section of the community." [internal citations omitted] Beyond the disservice to individual jurors, denial of Bibles for personal sustenance risks making jury duty less palatable to communities of faith. The Sixth Amendment does not require a rule that would actively discourage a broad section of our population from productive jury service.

It will fall to trial courts to navigate the tensions in these cases. Those courts need not bar all Bibles from the jury room, but they must endeavor through instructions and voir dire to ensure that their presence does not become a constitutionally problematic influence on jury deliberations. When exercising its discretion to grant a juror's request for a Bible, a court should issue a clear instruction that jurors use it only for personal sustenance and devotion, and avoid discussing it or referencing it as a source of authority for decisionmaking. A similar instruction should also be given on request of counsel, or if the court were to otherwise become informed that a juror had a Bible in his possession.

Id. at 228.

Similarly, in this case, it was not appropriate to presume that the juror's reference to the holy spirit was evidence of an external force, rather than evidence of the juror's appreciation of the seriousness of his duty. See id. For some, the holy

spirit is not an external force, but rather an aspect of their identity. See id. The law need not deny this implement of faith to jurors when they need it most. See id. Indeed, for some, the holy spirit, whether one exists or not, may provide the strength to render whatever verdict the law and the evidence compel. See id.

Our legal system would do a disservice to Americans of faith by presupposing that the consolation they find in the holy spirit would affect their impartiality as jurors. See id. Jury service is not antithetical to belief in a holy spirit. See id. A juror's reliance on a holy spirit bespeaks devotion to duty; not external influence. See id. The dismissal of all jurors who rely on the holy spirit in their deliberations risks excluding broad sections of our population from productive jury service. See id.

The legal question before the Court was not whether the holy spirit is an external force. That is a question for philosophers and theologians. The legal question before this court was the second question the Court itself had proposed: "I think I would also want to ask this juror whether he's been following the court's instructions about fully considering the evidence with the other jurors and discussing the case" A 45. But the prosecutor urged the Court to omit this question.

A 45. He said: "I don't think that's a useful question." A 45. At the prosecutor's urging, the Court decided not to ask this question.

Nevertheless, Juror 13 had already provided ample assurance that the holy spirit was not a constitutionally problematic influence on his deliberations. The record does not show that he was relying on the holy spirit as a source of authority for his "not guilty" verdict. He testified that his "not guilty" verdict was based on the Court's instructions, and on the evidence. He said his "not guilty" verdict was based on "what I think and believe." A 38. So the dismissal of Juror 13 also violated Ms. Brown's Sixth Amendment right to a jury of her peers. Therefore, justice requires a new trial.

CONCLUSION

Finally, it should be noted that the Court's determination that the holy spirit is an external force is not a credibility determination. See Abbell, at 1303. The Court's determination that the holy spirit is an external force is philosophical determination. The record does not show, beyond a reasonable doubt, that Juror 13's "not guilty" verdict, was not based on the sufficiency of the evidence. There is a substantial possibility the holy spirit was actually the juror's own mind or spirit telling him that one or more witnesses had not testified

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truthfully. The dismissal of Juror 13, for his comment that the holy spirit had told him that Ms. Brown was not guilty, violated Ms. Brown's Sixth Amendment right to a jury of her peers, and to a unanimous verdict. Accordingly, justice requires a new trial.

WHEREFORE, Ms. Brown prays that she be granted a new trial.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that this document was filed today with the Clerk of the Court by using the ECF system which will send a copy of the same and electronic notice of this filing to all counsel of record.

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June 8, 2017

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