

# Faculty Reference Guide:

## Case Law on Juror Misconduct (Sept. 2015)

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## Using the Faculty Reference Guide

This reference guide is intended as a faculty resource for presenters using the NCSC curriculum entitled *Preventing and Addressing Internet-related Juror Misconduct*. It contains a state-by-state summary of relevant case law on the topic of juror misconduct including Internet-related misconduct. The cases included in this Guide are not an exhaustive compilation of all cases on this topic, but were viewed by the NCSC Center for Jury Studies as the illustrative of basic legal principles applicable in each state. Presenters using this Guide should not rely exclusively on the summaries, but should read the cases closely for nuanced details. Presenters should also conduct their own review to identify more recent cases in each state

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## Alabama

***Ex parte Harrison*, 61 So. 3d 986 (2010).** The defendant, convicted of felony murder, filed for post-conviction relief based on grounds that a juror provided false information during voir dire. The Court of Appeals held that the claim was precluded by Ala. R. Crim. P. Rules 32.2 (relief unavailable if juror misconduct was known, but was not raised at trial. The Supreme Court of Alabama reversed, holding that it was unreasonable to make a defendant uncover all juror misconduct in the short time period before an appeal related to juror information disclosed during voir dire would be waived. Because there was no evidence that attorney should have expected that jurors falsified answers, the claim for juror misconduct was not waived. The Court reviews criminal cases dealing with pure questions of law on a de novo basis.

***Knight v. State*, 710 So. 2d 511 (Ct. of Crim. App. Ala. 1997).** During trial, the defendant entered a motion for a new trial because a juror conducted individual research and shared it with other jurors during deliberations. Because the research was favorable to the defendant, the trial court found that no prejudice had occurred and denied the motion. The jury convicted the defendant of first degree sexual abuse. The Court of Appeals upheld the verdict, explaining that the standard of review on appeal is abuse of discretion and that if the trial court investigates an allegation of juror misconduct and finds based on competent evidence that it is not prejudicial, the appeals court will not reverse. If the misconduct was prejudicial, the trial court must grant the motion for a new trial.

***Minshew v. State*, 594 So. 2d 703 (1991).** The defendant, charged with attempted murder, entered a motion for a mistrial and a new trial on grounds that a juror had looked up definitions in a dictionary. Upon receiving negative responses to the trial judge's question whether any juror was influenced by the dictionary definition, the judge gave a curative instruction that jurors must ignore any definitions unless provided by the court. On appeal, the Court held that a new trial is the appropriate remedy if juror misconduct affects the verdict or if extraneous facts are prejudicial as a matter of law. Although prejudice is presumed when a juror looks up legal definitions, actual prejudice must be shown. Otherwise a curative instruction is sufficient.

***Phillips v. State*, 462 So. 2d 981 (Ct. of Crim. App. Ala. 1984).** The defendant, charged with murder and attempted murder, entered a motion for a mistrial on grounds of ex parte communication by trial spectators to jurors. Specifically, spectators were nodding to jurors. The motion was denied, and the defendant convicted and appealed. The Court ruled that a trial judge must make a reasonable investigation into allegations of juror misconduct to determine if the rights of the defendant were prejudiced. The test is not whether communication actually influenced the jury, but if it may have affected the verdict.

## Alaska

**Alaska Stat. § 12.72.020.** Claims alleging juror misconduct are waived if known, but were not raised, at trial.

***Swain v. State*, 817 P.2d 927 (Crt. Of App. Ala. 1991).** During the trial of a defendant charged with robbery, burglary and assault, a juror spoke with a friend who told her that the defendant's sister had robbed his house the previous year. On appeal, the Court explained that the trial court should apply the *Fickes* test to determine if the *ex parte* communication was prejudicial to the defendant, but clarified that

when the communication with the juror was not intentional misconduct, but rather an extemporaneous communication, the court should consider whether the information communicated was objectively prejudicial.

**Fickes v. Petrolane-Alaska Gas Serv., 628 P.2d 908 (1981).** Plaintiffs sought damages for injuries resulting from a water treatment plant explosion. A juror who personally knew one of the expert witnesses for the defense, but failed to disclose this information during voir dire, commented on the witness' credibility during deliberations, leading to a verdict of not liable. On appeal, the Court held that the juror's failure to acknowledge his acquaintance with the expert witness obstructed justice. The Court explained that juror misconduct is presumed prejudicial, but is rebuttable by the other party's proof that the misconduct was harmless to the defendant. The three-prong test to determine prejudice is (1) would a party have challenged the juror in voir dire if the information was disclosed; (2) was the juror's comment during deliberations materially related to the essence of the claim; and (3) was the probable effect of the misconduct prejudicial for either party. The Court of Appeals will only overrule the trial court if the juror engages in serious misconduct that impedes a party's right to a fair trial.

## Arizona

**State v. Nelson, 229 Ariz. 180 (2012).** The defendant, convicted of murder, appealed on grounds that the trial court abused its discretion by not questioning jurors about their contact with a juror who was removed for looking up definitions online. The Court of Appeals upheld the conviction, explaining that there is a presumption of prejudice from any private communication, contact or tampering with a juror, but there must be evidence that the jury received and considered extrinsic evidence to support a motion for a new trial.

**State v. Aguilar, 224 Ariz. 299 (2010).** Defendants appealed a conviction for first degree murder and kidnapping on grounds that two jurors looked up definitions online and relied on those definitions during deliberations. The bailiff discovered the outside information on the definitions of the different degree of murder in the jury foreman's notebook. The court held that the presumption of prejudice with such outside information may only be rebutted if proven beyond a reasonable doubt that it was not harmful to the defendant. The court of appeals held that the superior court erred in denying the defendants the right to a new trial on the murder charge and therefore reversed and remanded their convictions on that issue.

**State v. Garcia, 141 Ariz. 580 (1984).** The defendant was convicted of sexually assaulting his neighbor. The defendant asked for a mistrial as a detective, one of the key witnesses in the prosecution's case, was seen talking to a juror. The court said that the detective should not have talked to the juror, but found that they did not talk about the case. The court found that the conduct was not enough to grant a mistrial, and the court of appeals affirmed the conviction.

**State v. Adams, 555 P.2d 358 (1976).** The defendant invited a juror in his assault and battery case to his house and they discussed elements of the case (which was illegal). He appealed on grounds of juror misconduct. The court of appeals affirmed the denial of defendant's motion for a new trial because defendant knew of the misconduct and did not inform the trial court, defendant was at least partially responsible for the misconduct, and defendant failed to prove that he was prejudiced by the conduct. The

court said that a new trial for improper communication with jurors was only necessary when the defendant was demonstrably or likely prejudiced by the behavior of the juror. Defendant's objection was also waived since he did not bring up the misconduct during the trial when he knew about it.

## Arkansas

**Blake v. Shellstrom, 2012 Ark. 428 (2012).** The plaintiff sought damages for injuries sustained during a motorcycle accident. A juror shared extraneous information about insurance coverage with other jurors during deliberations. On appeal, the Court explained that the moving party has the burden to demonstrate that there is a reasonable probability of prejudice; prejudice was not assumed. Since the jurors only brought speculative assertions into jury deliberations and not definitive facts, the court did not find prejudice. The Supreme Court of Arkansas also declined to guess about the jury's method of calculating damages.

**Dimas-Martinez v. State, 385 S.W.3d 238 (Ark. 2011).** The defendant was convicted of capital murder and aggravated robbery. On appeal, defendant brought up that one juror fell asleep during the guilt phase of the trial and another juror tweeted during the case. The defense notified the trial judge of its concerns about the sleeping juror, particularly after he slept through technical testimony, but the judge refused to replace the sleeping juror with an alternate. The court said that since the defense brought this issue up at trial, it was preserved for review. The judge also specifically instructed the jury not to tweet, and yet one of its members did anyway. However, when asked about it in court, the juror denied that he talked about the facts of the case, and the judge failed to remove him from the panel, despite the juror admitting to a clear rules violation. The appellate court found both of these oversights unacceptable, found that there was a high possibility for prejudice, and reversed and remanded the case for a new trial.

**Howard v. State, 238 S.W.3d 24 (Ark. 2006).** If the defendant does not object to perceived prejudicial behavior during the trial or on appeal, those issues are not preserved for a Rule 37 proceeding.

**Butler v. State, 82 S.W.3d 152 (Ark. 2002).** The defendant was convicted on three rape charges. A juror revealed during deliberations that he knew about an earlier trial of the defendant. The court weighed the possible prejudice against the risks of interrupting the trial and found that the moving party had not established a reasonable probability of prejudice against the defendant. Accordingly, the judge issued a curative instruction, telling the jury to only consider the information they heard during the trial. The Supreme Court of Arkansas upheld the defendant's convictions.

**Lawson v. State, 74 Ark. App. 257 (2001).** The defendant was convicted of murder. On appeal, she alleged that there was improper communication between a member of the jury and the victim's family. There was not enough evidence to prove that any prejudice occurred- indeed, there was even doubt as to whether the conversation actually took place. Since none of the testimony proved that any prejudice resulted, the trial court did not grant the defendant's motion for a new trial. The appellate court could not conclude there was an abuse of discretion, so it affirmed defendant's conviction.

**Dodson v. Allstate Ins. Co., 345 Ark. 430 (2001).** The plaintiff brought a civil suit for defamation and tortious interference with a contract. The jury found for the defendant. On appeal, the plaintiff alleged that the jury foreman engaged in improper ex parte communications with the judge and lied during voir dire. The court held that the appellant had the burden of showing a reasonable probability of prejudice and also had to show that he was unaware of the prejudice until after the trial. Since the appellant failed

to show sufficient evidence and the trial judge retained discretion in the matter, the Supreme Court of Arkansas did not reverse on that point. (It reversed on other grounds.)

## California

***Juror Number One v. Superior Court*, 206 Cal. App. 4th 854 (2012).** A juror posted comments on Facebook about an ongoing criminal trial. The juror failed to produce the comments when asked, citing privacy and constitutional concerns. The court of appeals found that the juror showed no expectation of privacy in his posts (which constituted misconduct), and that the rights of the parties involved to a fair trial outweighed any possible right to privacy that the juror might have. The court said that the juror could not block the court from seeing the Facebook posts, since the court needed to make a finding on whether either party was prejudiced.

***People v. Hamlin*, 170 Cal. App. 4th 1412 (2009).** A jury found the defendant guilty of torturing his wife. One of the jurors committed misconduct by running a search online for “great bodily injury.” Normally in California, juror misconduct brings with it a presumption of prejudice. However, in this instance, the juror stated that he had found no information during his search, and the court found that the rest of the jury had received no information which would prejudice the trial. As such, the court decided that no prejudice had occurred. Verdicts are only set aside if there is a substantial probability of juror bias, which did not exist on this issue in this case.

***People v. Hayes*, 21 Cal. 4th 1211 (1999).** During a first-degree murder trial, there were allegations that a juror (or multiple jurors) read newspaper accounts of the trial which contained prejudicial information about the defendant’s prior criminal history that the judge tried to keep away from the jury. The accused juror denied the misconduct. The court considered evidence of prejudice by affidavit. The evidence can include conduct, conditions or events, but it cannot include effects of such conduct in influencing another juror (mental processes). An evidentiary hearing can be held with testimonies to determine next steps. In a civil case, the court is limited in considerations. A trial court must make reasonable inquiry into misconduct ONLY when defense shows strong possibility of prejudice. Hearsay does not trigger court necessity to engage in full evidentiary hearing. If conduct prevented jurors from objectively regarding the evidence, a new trial can be granted.

***McWilliams v. Los Angeles Transit Lines*, 100 Cal. App. 2d 27 (1950).** This suit was brought to recover damages for personal injuries received in a collision between a streetcar and an automobile. The appellant alleged that the juror foreman relied on his personal engineering books to insert outside information into the proceedings. The court concluded that most of the evidence from the appeal came from hearsay. The trial court held that hearsay evidence was not admissible to impeach a jury verdict, and the appellate court affirmed the trial court’s order.

***People v. Quiel*, 68 Cal. App. 2d 674 (1945); (citing reference) *People v. Martinez*, 264 Cal. App. 2d 906 (1965).** The defendant appealed a conviction for petty theft. He alleged prejudice because of alleged conversations between an investigator and a juror. There was no rule against those parties talking, so long as they did not discuss the case. Furthermore, the defendant did not make the motion until appeal. Since he knew about the alleged prejudicial conduct while the trial was ongoing but failed to make the requisite motion, his right to review was waived.

## Colorado

***Kendrick v. Phippen*, 252 P.3d 1052 (Col. 2011).** The plaintiff sought damages for a negligent driving accident that occurred during winter. The jury foreperson calculated one party's speed, distance, and reaction time based on her previously held scientific and mathematical knowledge. The court held that a juror's professional and educational experiences do not constitute extraneous prejudicial information. Since the juror did not bring in outside legal or specific factual information obtained outside the record, the Colorado Supreme Court failed to overturn the trial court's decision to deny a new trial based on this issue. (The verdict was reversed on other grounds.)

***People v. Mollaun*, 194 P.3d 411 (Ct. App. Col. 2008).** The defendant was convicted of unlawful possession of a controlled substance and possession of drug paraphernalia. One of the jurors initially refused to participate in deliberations. Since the juror who initially refused to participate eventually participated fully in the process and affirmed that she agreed with the verdict of the jury, the verdict was not overturned.

***People v. Harlan*, 109 P.3d 616 (Col. 2005).** The defendant was convicted of murder, attempted murder, kidnapping, and assault. During deliberations, a juror brought a Bible into the jury room and shared with other jurors about the Bible's prescriptions for punishing murder (namely imposing a death sentence). The trial court granted defendant's motion to vacate the death sentence, and the state appealed. The court determined that there was an objective test used in Colorado to determine whether defendant was prejudiced. The court was permitted to make certain inquiries into the jury's consideration of the information under Colo. R. Evid. 606(b) and case law. The court considered the source of the information, the manner of its acquisition, its content, and its presence and use in the jury room, among other factors. The Bible verses were directly related to the death penalty, they were considered by many to be codes of law, the information was brought in by jurors and shared, and the information was considered in making the decision. Because the death sentence was imposed under the influence of passion, prejudice, or other arbitrary factors, it was set aside and life in prison was imposed. The appellate court affirmed the trial court's decision.

***People v. Wadle*, 97 P.3d 932 (Col. 2004).** The defendant was convicted of child abuse resulting in death. During deliberations, the jury asked for medical clarification and reference materials to explain part of the evidence, but was denied. A juror looked up the information after the denial and brought the information to the jury. The court applied a test of objective reasonableness and found that there was a reasonable possibility that the outside information influenced the verdict. The court of appeals properly reversed the conviction, and the Supreme Court of Colorado affirmed the reversal.

***Harper v. People*, 817 P.2d 77 (Col. 1991).** The defendant was convicted of child sexual assault. During the trial, a local newspaper published an article stating that the defendant had been accused of assaulting another child. The trial court failed to poll the jury to see if any members had seen the article, citing a lack of evidence that any juror had actually read the article. The Supreme Court of Colorado overturned the defendant's conviction and remanded for a new trial, citing the obstacles to obtaining evidence that a member of the jury had actually read the article. The court cited a Second Circuit test for measuring the impact of mid-trial publicity. The three-part test includes determining whether the coverage has the potential for unfair prejudice, polling the jury to see if they learned of the potentially prejudicial publicity, and individually examining any exposed jurors to see if the exposure had an effect on their ability to decide the case fairly.

***People v. Hernandez*, 695 P.2d 308 (Ct. App. Col. 1984).** The defendant was found guilty of one count of unlawful distribution of controlled substances and one count of conspiracy. The court held that the

defendant must establish prejudice by misconduct in the jury selection process in order to overturn his conviction. Since the defendant failed to produce definitive evidence of misconduct and given the overwhelming evidence of his guilt, the court of appeals affirmed the trial court's denial of a motion for a new trial.

## Connecticut

***Kervick v. Silver Hill Hosp.*, 309 Conn. 688 (Conn. 2013).** The Connecticut Supreme Court reversed an appellate court decision which overturned a trial court conviction because the trial court failed to poll the jury on a newspaper article about the trial published around the time of the trial. In a civil case, the trial judge is not required to poll the jury on whether or not they read an article pre-trial that explained the case and upcoming trial. It is left to the judge's discretion based on the article's inherent prejudice if an inquiry should be made.

***State v. Walker*, 835 A.2d 1058 (Ct. App. Conn. 2003).** The defendant was convicted of numerous criminal charges, including sexual assault. Multiple jurors reported receiving an anonymous letter in the mail which referred to the defendant as a convicted rapist. The letter was attached to a news article detailing the defendant's criminal history. The juror who read the article was removed, but jurors who just read the letter and discounted it were left on the jury. The defendant did not show evidence of actual prejudice, so it was within the trial court's rightful discretion to not declare a mistrial. On appeal, the Appellate Court of Connecticut upheld the defendant's convictions.

***State v. Rhodes*, 726 A.2d 513 (Conn. 1999).** The defendant was convicted of murder and felony murder for a shooting during a drug deal. One of the jurors spoke with her incarcerated boyfriend about the case. After a review of the evidence, the trial court determined that the juror's vote to convict the defendant was not a result of the communication. The prosecution was able to rebut the presumption of prejudice beyond a reasonable doubt.

## Delaware

***Black v. State*, 3 A.3d 218 (Del. 2010).** The defendant was convicted of possession with intent to deliver cocaine. One of the jurors discussed the trial with his son, a recovering drug addict, and subsequently brought some of that information back to the jury. The Supreme Court of Delaware held that the defendant's rights to an impartial jury (as protected by both the Delaware and United States Constitutions) were violated when the trial court failed to conduct an investigation into the existing egregious circumstances. The court reversed the judgment of the trial court and remanded the case for a new trial.

***Sykes v. State*, 953 A.2d 261 (Del. 2008).** The defendant was convicted of two counts of murder and two counts of rape, among other charges, and was sentenced to death. One of the witnesses in the case contacted two jurors after the guilt phase but before the penalty phase of the trial. The juror who was intimidated by the defendant's girlfriend was dismissed from the jury, but the juror who was not intimidated was left on the jury. The defendant failed to meet his burden proving prejudice, so the Supreme Court of Delaware found that the trial court judge did not abuse his discretion in his evaluation of the juror and denial of a new trial.

***McLain v. General Motors Corp.*, 586 A.2d 647 (Sup. Ct. Del. 1988).** The plaintiff consumer in a products liability action moved for a new trial. The consumer filed the motion based on *ex parte* communications between a juror and the attorneys after the verdict was rendered. The attorney filed an affidavit saying

that the juror would have held out for the consumer except for harassment from other jurors. The court concluded that the effect of the alleged harassment and intimidation of the other jurors fell within the ambit of the prohibition of Del. R. Evid. 606(b), which forbade juror testimony of matters intrinsic to jury deliberations. Any statements made by the bailiff in the case were not found to be extraneous or prejudicial. Given the aforementioned considerations, the court denied the motion for a new trial.

## Florida

***Tapanes v. State*, 43 So.3d 159 (Fl. Dist. Ct. App. 4th Cir. 2010).** The defendant in this case was convicted of manslaughter with a firearm. During a break in deliberations, a juror used a smartphone to look up the definition of the word “prudence.” He then passed on this evidence to other jurors. Since a Florida Rule of Criminal Procedure banned dictionaries from being taken into deliberation rooms and since the term could have been critical in deliberations, the appellate court found that the error was not harmless and that the trial court erred in denying the defendant’s motion for a new trial.

***Gould v. State*, 745 So.2d 354 (Dist. Ct. App. 4th Cir. 1999).** The appellant was convicted of and sentenced for sexual battery on a person under the age of twelve. During the trial, a bailiff allegedly told at least one juror that this particular jury was the third jury to sit on the case. The State encouraged the court to hold that the information passed on was trivial and that no prejudice could have happened because of the comments. The court denied to do this and instead remanded the case to the lower court, ordering it to conduct juror interviews. The court said that if the court found misconduct and/or evidence of prejudice in its interviews, a new trial must be granted.

***Street v. State*, 636 So.2d 1297 (Fl. 1994).** The defendant was convicted of first-degree murder, armed robbery, and several firearms-related charges. He was sentenced to death. The defendant appealed and objected to the trial court’s failure to poll the jury on their alertness after a juror was observed to be falling asleep. The defense also suggested that a third-party comment made in the presence of some of the juror unfairly prejudiced them. The judge subsequently asked the jurors if it affected their partiality, and, satisfied that it did not, denied the motion for a mistrial. In both instances, the appellate court found that the judge was operating well within his discretion and affirmed the defendant’s conviction and death sentence.

***Walt Disney World Co. v. Althouse* 427 So.2d 1135 (Ct. App. Fl. 1983).** The appellee sued Walt Disney World for negligence. During the trial, a witness for the appellant mistakenly entered the jury room and had a short conversation with a juror. The court decided that nothing improper had occurred during the conversation, and the appellee decided to continue with the trial. The jury then returned a verdict for the appellant. The appellee moved for a new trial based on the appearance of impropriety. However, the appellee made no effort to actually show that the contact was improper, and the appellee was actually the party who elected to continue with the trial immediately after the conversation happened. Given the facts, the appellate court held that the appellee should not be permitted to complain that the contact was prejudicial after hearing the verdict, and the court reversed the trial court’s order granting a new trial.

## Georgia

***Chambers v. State*, 739 S.E.2d 513 (Ct. App. Geor. 2013).** The defendant was convicted of voluntary manslaughter. One of the jurors looked up several definitions online, including a definition of an affirmative defense that the defendant used at trial which differed from the definition as the defendant intended it. The juror then shared the faulty definitions with the rest of the jury. Because the definitions dealt with a defense used at trial, there was a presumption of prejudice against the defendant. Because

the trial court's judgment was clearly erroneous and in violation of the defendant's Sixth Amendment rights, the judgment was reversed and the case was remanded for a new trial.

***Green v. State*, 680 S.E.2d 156 (Ct. App. Geor. 2009).** The defendant was convicted of kidnapping, armed robbery, aggravated sodomy, and possession of a knife during the commission of a crime. One juror failed to disclose that he had been previously convicted of a felony. Upon learning this, the juror was dismissed. Another juror was accused of "messing with" someone involved with the case. The defendant neither objected to the conduct during trial nor asked the trial court to investigate the behavior further. As such, the defendant's objection was waived on appeal, and the court affirmed the judgment.

***Wood v. Food Giant, Inc.* 359 S.E. 2d 410 (Ct. App. Geor. 1987).** The appellant-plaintiff brought a personal injury suit. She appealed based on jury instructions and alleged juror misconduct. Appellant failed to object during the trial even though her counsel knew that one of the jurors slept through essential testimony. She was held to have waived her objection on this issue. Appellant also alleged that a juror discussed the trial with a third party while the trial was still in progress. Since the appellant failed to show harm or prejudice, the appellate court affirmed the trial court's judgment.

## Hawaii

***State v. Yamada*, 122 P.3d 254 (Haw. 2005).** The defendant was convicted of robbery and assault. One of the jurors in the case fell asleep for approximately twelve minutes of the hour-long closing argument. The trial court granted the defendant's motion for a new trial based on this juror's action. On appeal, the Supreme Court of Hawaii ruled that this alleged deprivation of a fair trial was, in fact, harmless beyond a reasonable doubt because the defense advanced its legal theories during the opening statement and advanced its theory of the case during its presentation of witnesses. As such, the order for a new trial was vacated and the case remanded for sentencing.

## Idaho

***Pacheo v. Safeco Ins. Co. of America*, 780 P.2d 116 (Idaho 1989).** The appellant-plaintiff sued the defendant-appellee for denying a claim for fire insurance payout. One of the plaintiff's witnesses gave a juror a three block ride in his car. The appellant failed to present evidence that the two parties discussed the case during that time. Furthermore, the appellant's attorney knew of the alleged misconduct during the trial and failed to object to it. Given that the appellant failed to show prejudice and that he did not make a timely objection, the court denied the motion for a new trial on these grounds.

***Roll v. City of Middleton*, 771 P.2d 54 (Ct. App. Idaho 1989).** The appellant challenged a jury verdict favoring the appellee in an employee breach of contract case. One of the jurors allegedly discussed the case with her son and then told some members of the jury that the appellant had lost an earlier appeal in the Idaho Supreme Court. The appellant filed three affidavits in support of his story, and the city filed ten affidavits in support of its story- eight from jurors who did not hear the remarks, one from a juror who heard the remarks but denied that they influenced her vote, and one from the juror in question denying that she had any improper contact with anyone. The court held a hearing on the matter, during which the judge acknowledged that the case was a close case but that he did not think that prejudice occurred. As such, the judge denied a motion for a new trial. The Court of Appeals of Idaho clarified that the standard on which to focus was whether prejudice reasonably could have occurred, not whether there was any actual prejudice. The appellate court vacated the trial judge's order denying a new trial and remanded it for the judge to consider whether the information reasonably could have produced prejudice.

## Illinois

***Eskew v. Burlington Northern and Santa Fe RR*, 958 N.E.2d 426 (Ct. App. Ill. 2011).** Plaintiff (decedent's estate) brought a negligence action against a railroad for wrongful death. One of the jurors blogged about her experiences on the jury during trial. The trial court said that the appellant showed no evidence of prejudice. The trial court denied the defendant's motion for an evidentiary hearing about potential juror bias. The appellate court held that the trial court was acting well within its discretion when it determined that the blog posts showed that the jurors were striving to avoid discussing the case prematurely and were waiting until all evidence had been presented to make up their minds about who was responsible in the case. As such, the appellate court affirmed the judgment of the court below.

***Stallings v. Black and Decker Inc.*, 796 N.E.2d 143 (Ct. App. Ill. 2003).** Plaintiff-appellant filed suit against defendant-appellee for a wrongful death action dealing with product design. The trial court found in favor of the defendant. One of the jurors went to multiple hardware stores and researched the saws on his own, including some designs that were not admitted at trial. The appellate court held that the trial court improperly denied the plaintiff's motion for a new trial since the juror's investigation was about a subject central to the trial and the information he presented could have had an effect on the verdict. The court reversed the judgment and remanded the case for a new trial.

***Macias v. Cincinnati Forte*, 661 N.E.2d 472 (Ct. App. Ill. 1996).** Plaintiff sued defendant in a product liability and negligence action. One of the jurors looked up the definitions of several terms in a legal dictionary. The trial court denied the plaintiff's motion for a new trial, and they appealed. The appellate court held that not every incident of juror misconduct constitutes reversible error. The appellate court further stated that since the extraneous information did not relate directly to an issue in the case and improperly influence the verdict, there was no prejudice and therefore no reversible error in denying the motion for a new trial.

***People v. Chatman*, 367 N.E.2d 1050 (Ct. App. Ill. 1977).** The defendant was found guilty of rape and deviate sexual assault. During the trial, a juror accidentally had contact with a prosecution witness. On appeal, the court invoked the rule prohibiting a juror from invalidating his or her own verdict. Furthermore, counsel for defendant failed to inquire about or object to the conduct at trial. As such, the appellate court held that the trial court properly denied the defendant's post-trial motions.

***People v. Nelson*, 243 N.E.2d 225 (Ill. 1968).** Defendant was convicted of armed robbery and sentenced to a minimum of 4 years and not more than 10 years. He challenged his conviction and asserted that the jury considered matters outside the record. The appellate court affirmed the conviction but vacated the sentence on the basis that the record regarding mitigating circumstances was incomplete. The people challenged the decision and the court reversed and reinstated the original sentence. The appellate court properly refused to consider defendant's allegations of error with regard to the jury deliberations because he failed to present the issue in the motion for a new trial, which constituted waiver. The sentence was improperly vacated because the record showed that defendant was granted a hearing in mitigation and aggravation and that defendant was given ample opportunity to be heard. His failure to take advantage of the hearing and present evidence or witnesses constituted waiver. The trial court considered all the evidence before it and the burden was on defendant to present any mitigating evidence.

## Indiana

**Ramirez v. State, 7 N.E.3d 933 (Ind. 2014).** The defendant was convicted on charges of murder and criminal gang activity. During trial, one of the jurors reported to the court that a neighbor had called her the evening before to tell her that her downstairs neighbor heard gunshots and footsteps coming from her home while she was out dining. The juror related this information to the jurors. The juror informed the court that she no longer felt comfortable being a juror and asked to be excused. The defendant moved for a mistrial on grounds that relating the incident to the other jurors tainted the jury. The court conducted individual hearings with all of the jurors to ascertain their ability to continue to serve. Finding that the remaining jurors could serve, the court denied the defendant's motion. The court explained that to grant a motion for mistrial, the court would have to find by a preponderance of the evidence: (1) extrajudicial contact or communications between jurors and unauthorized persons occurred, and (2) the contact or communications pertained to the matter before the jury. The burden then shifts to the State to rebut this presumption of prejudice by showing that any contact or communications were harmless. If the State does not rebut the presumption, the trial court must grant a new trial. On the other hand, if a defendant fails to make the initial two-part showing, the presumption does not apply. Instead, the trial court must apply the probable harm standard for juror misconduct, granting a new trial only if the misconduct is "gross and probably harmed" the defendant. In egregious cases where juror conduct fundamentally compromises the appearance of juror neutrality, trial courts should skip *Curran's* two-part inquiry, find irrebuttable prejudice, and immediately declare a mistrial. . . . At all times, trial courts have discretion to decide whether a defendant has satisfied the initial two-part showing necessary to obtain the presumption of prejudice or a finding of irrebuttable prejudice.

**South Bend Clinic, Inc. v. Kistner, 769 N.E.2d 591 (Ct. App. Ind. 2002).** The defendants appealed from a medical malpractice verdict against them. During deliberations, multiple jurors looked up the dictionary definition of preponderance, as no definition was given to the jurors in the jury instructions. Because the jurors affirmed that the verdict was based off of the evidence presented to it at trial and prejudice was not affirmatively demonstrated, the trial court did not abuse its discretion by not finding prejudice. (Prejudice is not assumed when dealing with intra-jury communication.) As such, the trial court's judgment was affirmed.

## Iowa

**State v. Wells, 629 N.W.2d 346 (Iowa 2001).** The defendant was tried and convicted of livestock neglect. He heard communication about the case between the juror and a third party prior to closing arguments, but failed to object to the juror's conduct until after the unfavorable verdict was rendered. The Supreme Court of Iowa held (again) that parties may not "gamble" on their verdicts and must object when potentially prejudicial conduct occurs – not after the verdict is rendered – in order to preserve the objection on appeal.

**Iowa-Illinois Gas & Elec. Co. v. Black & Veatch, 497 N.W.2d 821 (Iowa 1993).** A juror in a breach of contract case looked up dictionary definitions of the words "sole," "proximate," "highest," "standard," "engineering," and "profession." The entire jury then discussed the definitions. In order for a new trial to be granted, the information had to have been calculated to, and with reasonable probability did, influence the verdict. The Supreme Court of Iowa held that no competent evidence indicated that the misconduct

improperly influenced the jury, so the trial court did not abuse its discretion in denying the motion for a new trial.

**Moore v. Vanderloo, 386 N.W.2d 108 (Iowa 1986).** The plaintiff filed a suit based on negligence and breach of warranty leading to personal injury. One of the jurors read an article about the case (and about settlement agreements with another party) while it was taking place. The plaintiff moved for a mistrial, which was denied. The court issued a curative instruction to the jury. Since the amount of the settlement was not disclosed, the trial court ruled that there was no prejudice that would alter the result. The appellate court upheld the verdict on an abuse-of-discretion standard.

## Kansas

**State v. Williams, 324 P.3d 1078, 1112 (Kan. 2014).** “For authority on the standard of review in juror misconduct cases, both parties cite *State v. Fenton*, 228 Kan. 658, 664, 620 P.2d 813 (1980), in which the court stated that the party claiming prejudice has the burden of establishing such prejudice. But *Fenton* predates *Ward*, where this court stated: ‘We recognize that imposing that burden on the State at this point changes the rule because, as noted, past Kansas cases have placed the burden of establishing prejudice on the defendant in mistrial cases.’ 292 Kan. at 578. Neither party discusses *Ward*, although the appellate briefs in this case were filed after *Ward* was decided. Regardless, *Ward* applies and the State has the burden in this case.”

**State v. Mitchell, 252 P.3d 586 (Ct. App. Kan. 2011).** The defendant was convicted of aggravated burglary and attempted aggravated robbery. Defendant’s counsel moved for a mistrial at the start of the second day of trial because he was led to believe that one of the jurors was text messaging during the trial. Since the defendant’s counsel did not request an interview with the juror, the trial court properly failed to presume prejudicial behavior and denied the motion for a mistrial.

**Roe v. Stigall, 499 P.2d 1049 (Kan. 1972).** The defendant appealed a verdict for plaintiff in a personal injury case. A juror talked to the defendant and her husband about a mutual acquaintance, but said nothing about the trial. After a hearing, the trial court determined there was no prejudice. The appellate court determined that the trial court did not abuse its discretion in determining that there was no prejudice requiring a new trial. Furthermore, since the defendant failed to complain of the conduct until after the verdict was rendered, she waived her right to object to it on appeal.

## Kentucky

**Sluss v. Commonwealth, 381 S.W.3d 215 (Ken. 2012).** The defendant was convicted of murder and assault, among other things. Evidence was presented after the trial suggesting that two of the jurors were Facebook friends with the victim’s mother. Neither juror disclosed this fact during voir dire; indeed, one party denied being on Facebook at all. The court failed to hold/presume that all Facebook friendships are prejudicial. Given privacy laws and the vague state of the law with regard to Facebook at the time of the case, the court held that the attorneys could not have discovered any sort of prejudicial relationship while the trial was ongoing. The court concluded that the defendant was entitled to a remand of the case for a post-trial hearing on the state of the relationships between the victim’s mother and the two jurors in question.

**Commonwealth v. Wood, 230 S.W.3d 331 (Ct. App. Ken. 2007).** The inmate sought relief under Rule 11.42, alleging juror misconduct and ineffective assistance of counsel. The trial court granted relief after hearing testimony from a juror in the case that established that the jury had consulted a dictionary during

deliberations for the definition of the word rape. On appeal, the Commonwealth argued that the trial court improperly heard testimony from the juror under Ky. R. Crim. P. 10.04. The appellate court affirmed, holding that 1) contrary to the restrictions in Rule 10.04, overt acts of misconduct by jurors could be considered by a trial court dealing with allegations of juror misconduct; 2) using a dictionary to look up the meaning of "rape" was an overt act; 3) the inmate was clearly prejudiced by the juror misconduct as the dictionary definition did not require penetration while penetration was a required element in Kentucky's rape statutes; and 4) as the trial court did not err in granting the inmate relief, there was no need to address his ineffective assistance of counsel claim.

***Gould v. Charlton Co.*, 929 S.W.2d 734 (Ken. 1996).** A juror advised the judge that another juror was discussing information received about an earlier settlement among some of the parties. The trial court conducted voir dire, dismissed the gossiping juror, left the reporting juror on the jury, gave a cautionary admonition to the jury, and denied the pavers' motion for mistrial. On this appeal, the court held that the lower appellate court had erred in reversing the trial court's denial of the pavers' motion for a mistrial. The mere exposure to information about the case did not result in juror disqualification, and it was up to the trial court to determine the impact of the exposure. A mistrial was an extreme remedy that should not have been granted unless the trial court balanced the interests of the litigant, the witnesses, the jurors, and the public, and concluded that there was such a defect in the proceeding that it would be a manifest injustice to continue.

***Hood v. Com.*, 448 S.W.2d 388 (Ct. App. Ken. 1969).** The defendant was convicted of three counts of arson, one count of escaping from custody, and one count of breaking and entering. He filed a motion for a new trial, claiming juror misconduct during voir dire. Since the appellant knew of the alleged misconduct at trial but failed to object or use a peremptory challenge, he waived his right to appeal on that issue.

***Drake v. Drake*, 52 S.W. 846 (Ct. App. Ken. 1899).** "It is now well established by the modern authorities that every instance of misconduct in a juror will not destroy the verdict. The rule extracted from the cases seems to be that, however improper such conduct may have been, yet if it does not appear that it was occasioned by the prevailing party, or any one in his behalf, if it do not indicate any improper bias upon the juror's mind, and the court cannot see that it either had or might have had an effect unfavorable to the party moving for a new trial, the verdict ought not to be set aside. . . . A party should not, with knowledge of misconduct on the part of the jury, conceal it from the court, and take the chance of a verdict in his favor, with the expectation of having it set aside if adverse to him. It did not appear that the facts offered to be shown were unknown to appellants or their counsel, and from the statement that the facts were notorious about the court house at the time, it may be inferred that they were not all ignorant of it."

## Louisiana

***Simmons v. Christus Schumpert Medical Center*, 71 So.3d 407 (Ct. App. Louis. 2011).** In a medical malpractice case, one of the jurors alleged that another juror conducted extraneous Internet research and brought some of the printed materials from said research into the jury room, sharing it with other jurors. The court held that improper behavior of a jury is not specifically defined by statute or jurisprudence, but must be determined by the facts and circumstances of each case. A new trial is mandated only upon a showing of jury misconduct which is of such a grievous nature as to preclude the impartial administration of justice. Otherwise, the granting of a new trial is left to the sound discretion of the trial court. A decision to deny a motion for new trial based upon jury misconduct is reviewed based on an abuse of discretion

standard. In this case, the court did not determine that the conduct was grievous enough to reverse the decision.

## Maine

***State v. Cheney*, 55 A.3d 473 (Sup. Jud. Ct. Maine 2012).** The defendant was convicted of manslaughter, OUI, and other related charges. Defendant claimed that the trial court erred in not granting his motion for a new trial after some of the jurors were exposed to a third party statement about substantive details of the case. In this case, after learning of the third-party comments made to the jurors, the court questioned each juror individually in the presence of the parties. Each juror indicated that he or she would not be influenced by the third-party contact and could remain impartial. At the conclusion of its questioning of the jurors, the court asked the parties if they wished to proceed. Both parties indicated that they wanted to proceed with the trial, and neither party asked the court to consider granting a mistrial. The appellate court held that at this point, the defendant had waived any presumption of prejudice, and the court's decision not to find prejudice was not clear (reversible) error.

***State v. Mimmovich*, 284 A.2d 282 (Sup. Jud. Ct. Maine 1971).** Two defendants were charged with and convicted of breaking into a pool hall. A witness overheard a conversation between two jurors discussing the guilt of each party. Defense counsel waited to object to the juror conduct until after the jury had heard the entirety of the case and retired to deliberate. The court held that while the jurors should avoid even private evaluations of the evidence during trial which might lead them to premature tentative conclusions which later testimony would rebut, such discussions are not ipso facto misconduct. Where a conversation is between two jurors only and not between a juror and a witness, or a lawyer, or any other person, such conduct will not warrant a new trial unless the substantive rights of the complaining party are prejudiced. The court also said that the defendants should have raised their objection as soon as they heard of the conduct and not waited until after the jury began deliberations.

## Maryland

***MD Rules, Rule 4-323. Appellate Waiver:*** Party needs to make known to court the action the party desires the court to take. If party has no opportunity to do so (lack of knowledge), it will not be considered waived; if the party does have the opportunity to object, therefore, the objection is waived on appeal.

***Wardlaw v. State*, 971 A.2d 331 (Ct. Sp. App. Mar. 2009).** The defendant was convicted of three counts of second-degree assault. One of the jurors researched oppositional defiant disorder online and shared the results of their research, including an apparent predisposition on the part of the affected person (in this case, the defendant) to lie, with the rest of the jury. The trial court was held to an abuse of discretion standard. In this case, the judge merely issued a curative instruction instead of conducting individual voir dire. The judge insisted on the adequacy of the curative instruction and the competency of the jury even after the prosecutor joined defense counsel's motion for a mistrial. The appellate court determined that the defendant's credibility was of the utmost importance in this case, since there was little other evidence to be used in the case. Given the importance of the defendant's credibility and the constitutional demand for a fair trial, the appellate court held that the trial court committed reversible error by not questioning each juror individually on the potential prejudice stemming from the juror's research so that the presumption of prejudice could be rebutted.

***Smith v. Pearre*, 625 A.2d 349 (Ct. Sp. App. Mar. 1993).** The decedent's surviving spouse brought a medical malpractice claim against several of the decedent's physicians for contributing to her husband's death. The jury foreman watched a 60 Minutes special on medical malpractice suits and how they affected

the behavior of doctors. Given that the 60 Minutes special was on doctors leaving the profession over medical malpractice suits and not about the specific medical condition at issue during the trial, the court found that it was possible but not likely that the foreman's viewing of the special prejudiced the appellant and found no abuse of discretion in the trial court's denial of a new trial.

## Massachusetts

**Mass. R. Crim. P. 22 Appellate Waiver:** The defendant must make objection known to court when learning of objectionable conduct or information. If there is no opportunity to object (because the objectionable information is unknown), the absence of objection will not prejudice him.

**Commonwealth v. Werner, 967 N.E.2d 159 (App. Ct. Mass. 2012).** The defendant was convicted of twelve counts of larceny. Post-trial statements by some jurors on Facebook raised the possibility of prejudice. The appellate court found, inter alia, that after hearing from the affected jurors and assessing their credibility, the trial judge properly concluded that none of the jurors had been subjected to an extraneous influence in response to his or her postings. Denial of defendant's Rule 30(b) motion for a new trial without awaiting Facebook's response to the subpoena was within the judge's discretion, as there was only speculation regarding extraneous influences on the jury arising out of juror postings. The order denying a new trial was affirmed.

**Commonwealth v. Guisti, 747 N.E.2d 673 (Mass. 2001).** The defendant was convicted of aggravated rape, among other charges. One of the jurors made a comment on an email list suggesting her desire to convict the defendant so she could do other things with her life instead of sitting on a jury. The judge denied the defendant's motion for voir dire of the juror who made the comments to determine prejudice. The appellate court said that the defense needed to make a "colorable showing" of extraneous information or influence. The court further stated that although the initial message was not enough to show prejudice, the juror may have received replies to her post, and therefore the judge should have conducted an inquiry into the matter. The denial of the motion for voir dire was reversed and remanded to the trial court for further proceedings.

## Michigan

**People v. Messenger, 561 N.W.2d 463 (Ct. App. Mich. 1997).** Defendant moved for a mistrial after it was discovered that a juror read a dictionary definition of "premeditation" to the jury. The motion was denied and defendant appealed. Defendant argued that the trial court should have granted his motion for a mistrial. The court held that defendant was not prejudiced because the trial court's instructions regarding premeditation were substantively identical to the dictionary definition. Furthermore, the jury charge as a whole covered the substance of the omitted instruction to disregard the dictionary definition.

**Hranach v. Proksch Const. Co., 245 N.W.2d 345 (Ct. App. Mich. 1976).** This case was a personal injury action in which the jury verdict found for defendant. One of the jurors was observed eating lunch with the defendant's primary witness in the case. The judge thoroughly investigated the incident and determined that no impropriety had been shown, as the parties alleged that the conversation was unrelated to the case. The appellate court did not find error in the trial court's exercise of discretion, and so the verdict was affirmed.

**People v. Finehout, 167 N.W.2d 473 (Ct. App. Mich. 1969).** The defendant was convicted of obtaining money under false pretenses. During the course of the trial, a juror was observed talking to a prosecution witness during one of the recesses. The judge interrogated the juror in chambers and in the presence of

counsel. The juror admitted talking to one of the witnesses. The juror informed the trial court that the conversation consisted of his telling the witness that he was still in business and that one of his employee's sons was in Vietnam. The defendant observed the conduct but failed to raise an objection during the trial. As such, the defendant was held to have waived his right to raise the issue on appeal.

## Minnesota

***State v. Hanke*, 712 N.W.2d 211 (Ct. App. Minn. 2006).** The district court learned, through a juror's post-trial questionnaire, that a bailiff in a criminal trial on drug charges twice made prejudicial comments in the presence of at least three jurors regarding the drug problem in the county where the trial was being held; the bailiff also gave an opinion about the need to punish offenders. The district court concluded that the comments were harmless. At issue on appeal was whether defendant was entitled to a new trial because of the improper comments made by the bailiff. The appellate court concluded the bailiff's comments in this case were presumptively prejudicial because they were privately made to the jurors and could have affected defendant's right to an impartial jury. Further, the State did not overcome the presumption of prejudice and satisfy its burden of establishing that the contact was harmless, since the inculpatory evidence at trial was circumstantial and not overwhelming. The appellate court held that the district court abused its discretion in failing to order a new trial.

***State v. Jackson*, 615 N.W.2d 391 (Ct. App. Minn. 2000).** Defendant was convicted of assault and second-degree murder. On appeal, he requested a *Schwartz* hearing to determine juror misconduct and/or prejudice based on reports that one juror had pressured another juror to change her vote. The court said that all of the state rules about juror misconduct deal with contact from/influence by a non-juror, not between two jurors. As such, the court held that the defendant failed to show prejudice and affirmed the denial of the motion for the *Schwartz* hearing.

***State v. Landro*, 504 N.W.2d 741 (Minn. 1993).** The defendant was convicted of first and second degree murder. After the presentation of evidence, the jury foreman telephoned a local anchorperson about the case. The court held that while the contact was juror misconduct, it had not prejudiced the verdict, as none of the other jurors knew of the call. It also held that the trial court acted properly in holding a hearing to determine the nature of the misconduct and whether there was any prejudice. It held that the rebuttal evidence issue was waived and that there was no abuse of discretion in finding that the State's case was overwhelming.

***State v. Wilford*, 408 N.W.2d 577 (Minn. 1987).** The defendant was convicted of first-degree murder. Near the end of the trial, two observers made comments about the defendant's presumed guilt in the presence of two jurors. The court said that the proper procedure to determine the likelihood of prejudice was to weigh the nature and source of the prejudicial matter, the number of jurors exposed to the influence, the weight of evidence properly before the jury, and the likelihood that curative measures were effective in reducing the prejudice. Here, the court said that only these two jurors heard the comments, the jurors had much more information than the observers, and the evidence was overwhelmingly clear about the defendant's guilt. As such, the trial court found that prejudice was unlikely, and the appellate court affirmed that conclusion and the verdict.

## Mississippi

***Rutland v. State*, 60 So.3d 137 (Miss. 2011).** Defendant was convicted of child abuse. During deliberations, two jurors looked up the dictionary definitions of "abuse" and "neglect." On appeal, the trial court's decision was reviewed on an abuse of discretion standard. A juror's statement related to how extraneous

information affected the jury's verdict and was improper under Miss. R. Evid. 606(b). The defendant was not permitted to base her argument for a new trial on a statement that was prohibited by the Rules. In addition to improperly basing much of her argument on the juror's statement, the defendant also failed to demonstrate how she was prejudiced by the juror's impropriety. Considering that much of the evidence defendant presented to support her claim of juror misconduct is inadmissible under R. 606(b), she failed to demonstrate how she was prejudiced by the juror's impropriety. Without showing more, defendant was unable to show any prejudice. As such, the trial court's judgment was affirmed.

***Perkins v. Dauterive, 882 So.2d 773 (Ct. App. Miss. 2004).*** This was a medical malpractice action which was resolved in the defendant's favor. One of the jurors in the case was a nurse who shared some of her medical knowledge with the rest of the jury. The court said that in assessing the significance of the extraneous information, a new trial may be given if the extra-record facts are material (they affect an issue of importance in the case) and if the extra-record facts are qualitatively different from the evidence properly presented to the jury in the case. Since the extraneous information came from within the jury room, the appellate court said that the trial court was well within its discretion to determine that no prejudice came about because of this information. The court affirmed the judgment of the trial court.

## Missouri

***State v. Taylor, 917 S.W.2d 222 (Ct. of App. Miss. Western Dist. 1996).*** The defendant was tried and convicted of assault. During the trial, two jurors went to the library to determine the punishments that accompanied each charge and discussed the fruits of their research with the rest of the jury. A rebuttable presumption of prejudice arises upon evidence of improper communications with/influences on the jury during deliberations; however, this presumption can be overcome by competent evidence of a lack of prejudice. Since the evidence considered did not deal with guilt, merely punishment (which the jury did not decide), the court held that there was no evidence of prejudice against the defendant. The appellate court reviewed the case on an abuse of discretion standard and affirmed the conviction.

***Knothe v. Belcher, 691 S.W.2d 297 (Ct. App. Missouri 1985).*** The plaintiff sued the defendant based on injuries from a boating accident. The plaintiff was awarded damages but appealed the verdict on the grounds that the damages were inadequate. During the trial, multiple jurors were heard talking to the defendant about the construction of a new building. The appellate court held that while it is true that contact between the defendant and jurors is not misconduct per se, the trial court erred in not conducting a hearing to determine the potential for prejudice. The case was remanded for a new trial based on the juror misconduct and other issues to do with the verdict.

***State v. Mullen, 528 S.W.2d 517 (Ct. App. Missouri 1975).*** The defendant was convicted of first-degree murder and first-degree robbery. One of the jurors realized during the trial that he had made a mistake during voir dire, as he recognized the mother of one of the victims in the courtroom. The juror promptly disclosed the mistake to the judge. The court considered three factors in determining the existence of prejudice: how well the juror knew the person recognized; whether the inaccurate answer was intentional or concealed, which might suggest prejudice; and the juror's own statement that he or she would not be influenced in deciding the facts of the case. In this case, the court determined that these factors suggested a lack of prejudice. Furthermore, the defendant alleged juror misconduct based on communications between a juror and a sheriff. However, since the defendant did not object to the conduct until after the primary verdict was rendered, he was held to have waived it on appeal. The appellate court upheld the judgment of the trial court.

## Montana

***Stebner v. Associated Materials, Inc.*, 2010 MT 138 (2010).** A jury decided a breach of warranty action in favor of the defendant company. The plaintiff apartment owner claimed that because a juror used outside resources during the course of deliberations, he did not receive a fair trial. The supreme court found that the juror's internet research constituted an external influence. Because her affidavit concerned whether extraneous prejudicial information was improperly brought to a jury's attention, it could use her affidavit to determine if the jury's verdict should be impeached, Mont. R. Evid. 606(b). The supreme court concluded that the owner was not prejudiced by the juror's comment regarding her research and subsequent understanding of the term "preponderance." The comment did not affect the verdict because the jurors had already voted eleven to one in favor of the company when the comment was made. According to the affidavits, the internet definition matched the jury instruction. The presumption of prejudice was rebutted by the evidence in the record. Nothing in the affidavits showed that any juror's vote was influenced by anything other than the evidence presented at trial.

***State v. Baugh*, 571 P.2d 779 (1977).** The defendant was charged with deliberate homicide. Five days after the trial started, the court discovered that one of the jurors had seen a video of the exhumation of the body. She was brought in for questioning, dismissed, and the judge brought in an alternative juror and continued the trial. The trial judge also questioned the jury about the effect of the dismissed juror after they had reached their verdict, to which they replied that there was no effect. Since the removed juror did not participate in deliberations about the case and the rest of the jurors affirmed that her removal had no effect on their considerations, the court found that there was no prejudice. The appellate court affirmed defendant's conviction.

## Nebraska

***State v. Harrison*, 651 N.W.2d 571 (Neb. 2002).** Defendant alleged three separate incidents of jury misconduct at the original trial, and in particular, defendant argued that the district court erred in admitting a juror's testimony surrounding a nonjuror's comments made in a elevator, in violation of Neb. Rev. Stat. § 27-606(2). The supreme court ruled that the testimony at issue reflected that the district court merely inquired as to whether the juror was able to render a fair and impartial verdict prior to deliberation, and recitation of the trial-level colloquy at the postconviction hearing neither implicated nor was prohibited by Neb. Rev. Stat. § 27-606(2). Also, there was not a reasonable possibility that the nonjuror communications to the jurors affected the verdict and therefore, the district court's determination that the three incidents were not prejudicial was not clearly erroneous. Furthermore, the district court did not err in rejecting defendant's claim of ineffective assistance of counsel.

***Nichols v. Busse*, 503 N.W.2d 173 (Neb. 1993).** This case dealt with an intentional infliction of emotional distress claim following an automobile accident resulting in child's death. Plaintiff appealed the sufficiency of the verdict and claimed four instances of juror misconduct. The court said that allegations of misconduct need to be substantiated by competent evidence. If a jury considers extraneous information, that information may be deemed prejudicial without proof of actual prejudice, provided that the information relates to an issue submitted to the jury and there is a reasonable possibility that the information affected the verdict to a litigant's detriment. The court decided to prohibit the use of juror affidavits which seek to impeach verdicts based on extraneous juror knowledge based on personal experience. Since the affidavits based on person experience were excluded, plaintiff's motion for a new trial were not supported by competent evidence. The appellate court therefore ruled that the trial court did not abuse its discretion in denying the motion for a new trial.

***State v. Bonaparte*, 384 N.W.2d 304 (Neb. 1986).** During the course of defendant's trial, defendant approached one juror as she was leaving the courthouse and insisted on giving her a ride home. During the car ride, defendant drove by the crime scene and asked the juror what she thought of the case. The next day, during a court recess, defendant again stopped the juror and asked her about the case. Defendant was subsequently convicted of possession of a controlled substance with intent to deliver. On appeal, defendant argued that there was jury misconduct because the juror allowed defendant to approach her, talk to her, offered her a ride, and took her to the crime scene. The court rejected the argument and affirmed the denial of defendant's motion for a new trial. The court held that defendant could not be heard to complain of an error, which he himself was instrumental in bringing about. The court held that because defendant initiated and caused jury misconduct, he was estopped from maintaining that such misconduct entitled him to a new trial.

***Ellis v. Far-Mar-Co, Inc.* 340 N.W.2d 423 (Neb. 1983).** This was a personal injury claim in which the plaintiff won \$67,000 at trial. During jury deliberations, one of the jurors called one of the witnesses who testified in the case and identified himself as a journalist. During the call, he sought information about relationships between the defendant and other entities. All 12 jurors said that this juror did not disclose the results of his conversation to any other members of the jury. Since any potential prejudice would have been against the plaintiff, and the juror who made the call was the only juror of the twelve who voted against the plaintiff (who recovered), the court determined that the juror's conduct did not prejudice the defendant. Since the evidence of prejudice was not clear and convincing, the appellate court declined to overrule the trial court's decision.

## Nevada

***Zana v. State*, 216 P.3d 244 (Nev. 2009).** The defendant was convicted of open or gross lewdness to a child. During a weekend recess, one of the jurors attempted to find a pornographic website mentioned in the trial. The juror recounted his attempt when the jury reconvened, but the issue was not discussed for very long. Since the information obtained through the juror's independent research was vague, ambiguous, and only discussed for a brief time, the misconduct was not prejudicial. Based on this conclusion, the district court denied the motion for a mistrial. Given the facts, the appellate court did not find an abuse of discretion by the trial court.

***Meyer v. State*, 80 P.3d 447 (Nev. 2003).** The defendant was convicted of sexual assault. During deliberations, a juror performed outside research regarding side effects of a medicine and discussed the results of said research with the jury. The appellate court performed a de novo review on the prejudicial effect of the misconduct. The court said that in order for a new trial to be granted, the appellant must show that the extraneous influence could have objectively influenced the jury. Prejudice is shown when there exists a reasonable probability that the outside information affected the verdict. The court looked at several factors to help determine prejudice, including how the material was introduced, the time spent discussing the material, the timing of its introduction, whether the information was vague or specific, whether it was information involving inadmissible evidence, and its influence in light of trial as a whole. Since the information about the medicine taken by the victim was a material issue in the case, the court determined that there was a reasonable probability of prejudice and held that the trial court erred in denying appellant's motion for a new trial.

***Callier v. Warden, Nevada Women's Correctional Center*, 901 P.2d 619 (Nev. 1995).** The defendant was convicted of first-degree murder with deadly weapon and filed a writ for habeas corpus. She alleged that a juror had improper contact with a witness during the trial. The court ruled that allegations of juror

misconduct must be made when the information becomes available to counsel. A petitioner cannot file for habeas corpus for post-conviction relief on juror misconduct unless he can demonstrate good cause for failing to provide the petition earlier. Since she did not demonstrate good cause and did not demonstrate prejudice in barring her juror misconduct claim, the appellate court upheld the ruling that barred her claim.

## New Hampshire

***State v. Lamy, 969 A.2d 451 (NH 2009)***. Defendant convicted of aggravated driving, assault, manslaughter, and negligent homicide. One of the jurors in the case revisited the crime scene. The court held that there was a rebuttable presumption of prejudice for unauthorized viewing of the crime scene in criminal trials. In this case, the trial court conducted an inquiry into the matter and subsequently dismissed the juror who viewed the crime scene and also dismissed a juror who said that she could not disregard the outside information. The court also issued the remaining jury members a curative instruction. Given these measures, the appellate court agreed with the state that it had done enough to overcome the presumption of prejudice by juror misconduct.

***State v. Goupil, 908 A.2d 1256 (NH 2006)***. The defendant was convicted of felonious sexual assault and theft. One of the jurors in the case posted derogatory and biased opinions regarding criminal defendants and the judicial process on his personal blog, which was available to the public and other jurors on the case. The court held that no reversal was required as defendant did not allege that any other jurors even knew of the blog, and the statement, on its face, did not reference anything specifically related to defendant's case. The supreme court further concluded, after voir dire of the juror, that the juror was able to set aside his personal opinion and render a verdict based upon the evidence presented in accordance with the instructions as to the law.

***State v. Gordon, 692 A.2d 505 (NH 1997)***. The defendant was convicted of rape. One of the jurors in the case went to a library to look up the state's rape statute. The appellate court said that the trial court has broad discretion in determining whether misconduct produced the verdict; it is less important if she misbehaved if it was not influential. Since the proper inquiry was "whether the juror's misconduct produced the verdict, and not whether [she] misbehaved during the trial," and the juror's research was found not to have influenced her vote, the appellate court agreed that there had been no abuse of discretion and affirmed the trial court's conviction of defendant.

## New Jersey

***State v. McGuire, 16 A.3d 411 (Sup. Ct. NJ 2011)***. The defendant was convicted of murder. During jury deliberations, an excused juror wrote a note to the remaining jurors expressing her support and discussing online internet coverage of the jury trial. Other jurors mentioned that they were aware of some blog coverage of the trial. The trial court and counsel from both sides conducted extensive individual voir dire of each juror. The judge concluded that the juror's note was an insignificant communication and would not affect the outcome of the case. After the voir dire, the judge issued a curative instruction and allowed the jury to resume deliberations. Since the trial judge followed procedure by conducting voir dire of the members of the jury and was in the best place to make the determination about potential prejudice, the appellate court found no error in the trial court's denial of a motion for a new trial.

***State v. Baluch, 775 A.2d 127 (Superior Ct NJ 2001)***. The defendant was convicted of reckless manslaughter and aggravated assault. One of the jurors discussed the case with a friend, who happened to be an attorney. The defendant did not raise an objection before the end of his trial; in fact, the

defendant stated to the court that the jury would be able to remain impartial even with the juror in question. Given not only the lack of an objection at the trial level but the defendant's own endorsement of the court's conduct, the defendant was held to have waived the issue on appeal.

***State v. Scherzer, 694 A.2d 196 (Superior Ct. NJ 1997)***. The defendants were convicted of sexual assault. During the trial, one of the jurors, an aspiring minister, held prayer sessions in the jury room, praying for the victim of the assault multiple times. Multiple jurors joined the juror in question during these prayers. Another juror voiced concerns about the credibility of witnesses and stated that she had discussed the case with her pastor. After a two-day investigation, the judge removed both jurors from the jury. The trial judge declared that a mistrial was not required due to the testimony of other jurors that the conduct of the two dismissed jurors had not affected their ability to be impartial. The appellate court agreed with the trial court that no outside influences had penetrated the jury room. The court further agreed that the judge's determination that the prayers and premature expressions of opinion were not prejudicial, and therefore agreed that a mistrial was not required on juror misconduct grounds.

## New Mexico

***State v. Montoya, 306 P.3d 426 (NM 2013)***. The defendant was convicted of first degree felony murder. One of the jurors in a case knew one of the witnesses and had called her and made statements about the defendant suggesting that she had prejudged him. Upon learning this, the trial court called the juror in for questioning and subsequently dismissed her. The court also called another member of the jury pool who was not selected for service and determined that the dismissed juror's comments to her were not heard by any members of the jury. The judge subsequently issued a curative instruction to the jury and let the jury continue service. Since there was no credible evidence that extraneous information had reached the members of the jury who decided the case, no prejudice was shown. As a result, the appellate court rejected the defendant's claim of error.

***Kilgore v. Fuji Heavy Industries Ltd., 240 P.3d 648 (NM 2010)***. The plaintiffs were injured when their vehicle rolled down an embankment. A passenger in the backseat landed on the roof. When plaintiffs filed a tort suit, the jury rendered a verdict for defendants. Plaintiffs filed a motion for a new trial, claiming they were presumptively prejudiced by juror misconduct because a juror personally obtained the advice of the owner of repair garage as to whether seatbelts were prone to inadvertent unbuckling. Plaintiffs submitted an affidavit establishing that the owner of the repair shop told her that he had never heard of that happening. The Supreme Court of New Mexico held that this information constituted extraneous material that actually reached one of the jurors. The court clarified that the presumption of prejudice attaching to extraneous juror communications no longer existed under New Mexico law. A remand for an evidentiary hearing to determine the probability of prejudice, rather than a new trial was the appropriate remedy.

***Gallegos By and Through Gallegos v. Southwest Community Health Services, 872 P.2d 899 (Ct. App. NM 1994)***. In this case, there was a verdict brought in for the defendant on a medical malpractice suit. One of the jurors made a comment to an alternate juror on the day of the verdict that there would be a verdict that day. Since the comment dealt only with the timing of the jury verdict and not any substantive matter from the trial, the court held that the statement was not misconduct. As a result, the appellate court held that there was no error in denying the appellant's motion for a new trial because of these comments.

## New York

***People v. Wilson*, 939 N.Y.S.2d 463 (2012).** The defendant was convicted of murder. One of the jurors posted on Facebook that she was on a jury, and some of her friends made foolish replies relating to trials in general that defendant characterizes as "inflammatory." However, the juror testified unequivocally that she was not affected by these comments, that she did not discuss the case with anyone during the trial, and that she had decided the case impartially, based only on the evidence. The trial court conducted a thorough hearing about the issue and determined that the juror was not biased. Given that the trial court followed proper procedure in determining potential juror prejudice and found none, the appellate court found the denial of a motion for a new trial to be proper.

***People v. Marsden*, 88 A.D.3d 909 (Sup. Ct. NY 2011).** The defendant was convicted of murder, robbery, and possession of a weapon. One of the jurors submitted an affidavit alleging, among other things, that two jurors discussed outside information that they learned from a newspaper and online searches regarding the trial and its participants, and that one juror had conferred with his priest. The trial court did not hold a hearing to determine prejudice. On appeal, the appellate court held that when there are allegations of outside influence during deliberations, the trial court must hold a hearing to determine the materiality of the allegations and the likelihood of prejudice. Since the trial court did not do so, the appellate court remanded the case for such a hearing.

***Kraemer v. Zimmerman*, 249 A.D.2d 159 (Sup. Ct. NY 1998).** The jury in this case returned a verdict in a medical malpractice action for the defendant. The plaintiffs alleged juror misconduct after a dismissed alternate juror reported that a juror had looked up medical terms in a dictionary and had discussed those terms with fellow jurors. After this report, the trial court interviewed each juror individually outside the presence of counsel. The trial court found that a juror had looked up a term in the dictionary, but no discussion of the case had occurred. The trial court concluded there was no juror misconduct. Plaintiffs' counsel expressly declined to request a mistrial. Instead, plaintiffs waited until after the verdict in defendants' favor, and then sought to set it aside pursuant to N.Y. C.P.L.R. 4404(a). On appeal, the court affirmed the denial of the motion, holding that the plaintiffs had not properly preserved the claim of juror misconduct by a motion to set aside the verdict rather than asserting it in advance of the verdict as a ground for mistrial. Counsel had been granted access to the record of the trial court's juror interviews. Even if some information had been disseminated improperly, the jurors' statements established that they were not influenced by it. The discharge of a juror for repeatedly stating that his mind was made up before summations and the court's charge was not error; nor was the seating of an alternate juror who was properly found to be impartial. As such, the court affirmed the judgment in favor of the defendants.

***People v. Smith*, 187 A.D.2d 365 (Sup. Ct. NY 1992).** The defendant was convicted of murder, but then the trial court granted her a new trial based on juror misconduct, since a juror had allegedly read a newspaper article about the case. On appeal, the court reversed and remanded the matter for a full evidentiary hearing on claimed juror misconduct. The court held that although defendant satisfied the relevant statutory provisions because she alleged a legal basis for the motion in the form of a newspaper article discussing the case that one juror allegedly read and related to other jurors, and submitted sworn allegations of all of the essential facts, the trial court incorrectly found that defendant's allegations were uncontested and that the article was presumptively prejudicial. The court held that the verdict should not have been set aside without a showing as to what extra-record material came before the jury, if any, and its impact on the jury's opinions and ability to render a fair verdict.

## North Carolina

***State v. Armstrong*, 691 S.E.2d 433 (Ct. App. NC 2010).** The defendant was convicted of second-degree murder. One of the jurors in the case looked up a drug that was in the defendant's system at the time of the crash leading to his arrest. The trial court looked at the objective impact on the jury to see if there was any possibility of influence from this extrinsic evidence. Since the juror offered few details of her Internet research and since the State offered substantial testimony on the same topic, the appellate court concluded that there was no reasonable possibility that the juror's research would have had an effect on the average juror. As such, the appellate court held that the trial court did not err in its denial of a motion for appropriate relief.

***State v. Patino*, 699 S.E.2d 678 (Ct. App. NC 2010).** The defendant was convicted of sexual battery. During the trial, multiple jurors looked up the sexual battery statute and other legal terms in an online dictionary. The appellate court held that because definitions of legal terms are not extraneous information under Rule 606 and did not implicate the defendant's constitutional right to confront witnesses against him, the allegations raised by defendant's trial counsel were not proper matters for an inquiry by the trial court. Thus, the trial court did not abuse its discretion in failing to conduct further inquiry into the allegations or in denying defendant's motion for a new trial.

***State v. Hill*, 632 S.E.2d 777 (Ct. App. NC 2006).** The defendant was convicted of taking indecent liberties with a child, statutory rape, and possession with intent to sell marijuana. During jury deliberations, one of the jurors went to a restaurant across the street from defendant's business and made conclusions about some of the crimes in questions based on her observations. She then returned to the rest of the jury and shared her thoughts. The matter was brought to the attention of the judge, who accepted the fifteen counts on which the jury had previously decided and declared a mistrial as to the remaining six counts. On appeal, the appellate court determined that the issue had not been properly preserved for appeal. However, the appellate court stated that if the issue had been preserved, nothing in the juror's independent "investigation" of Defendant's premises and her subsequent communication to the other jurors about her observations established that the jury's *prior* verdicts were rendered with any partiality or prejudice, much less the serious prejudice calling for a mistrial. As such, the court overruled the initial assignment of error.

***State v. Bethea*, 617 S.E.2d 687 (Ct. App. NC 2005).** The defendant was convicted of attempted murder, and appealed the trial court's denial of a limiting instruction regarding juror contact with outside observers. During the trial, two observers told five jurors in an elevator that the defendant was lying about part of his testimony. Upon hearing this, the judge conducted voir dire of these jurors individually and of the jury as a whole and issued a jury instruction telling the jury to only consider the evidence presented at trial in its verdict. All of the jurors responded that the incident had not affected their ability to make an impartial decision about the case. The jurors reiterated their ability to make an impartial decision at the close of arguments in the case. Since the trial court investigated the issue appropriately and the defendant failed to show prejudice, the appellate court held that there was no error in failing to grant relief because of these comments.

## North Dakota

***State v. Myers*, 770 N.W.2d 713 (ND 2009).** The defendant was found guilty of violating a domestic protection order. The defendant argued that he was entitled to a new trial because his constitutional right to a fair trial was violated when a juror slept through the officer's testimony. The supreme court noted that defendant did not establish the juror was in fact sleeping. The district court took steps to ensure

defendant had a fair trial by watching the jury throughout the rest of the trial to make sure all jurors were paying attention. The evidence revealed that after being notified by defendant's trial counsel of the potential juror misconduct, the district court watched the jury closely to ensure they were attentive. Defendant failed to demonstrate he was prejudiced by the allegedly sleeping juror and, therefore, failed to meet his burden of demonstrating that but for his trial counsel's failure to seek a remedy for the alleged juror misconduct, the result of his criminal trial would have been different. As such, the judgment of the trial court was affirmed.

***State v. Newman, 738 N.W.2d 887 (ND 2007).*** The defendant violated a domestic violence protection order by attempting to start a fire in order to kill someone, and a tenant in the building died as a result. The defendant was convicted of felony murder, among other charges. During the trial, one of the jurors was text messaging someone while in the jury box. The supreme court held that defendant's right to a fair and impartial jury under the Sixth Amendment and N.D. Const. art. I, § 13 was not violated by the juror's use of a cell phone. The trial court informed the jury not to communicate among themselves or others on the subject of the trial, pursuant to N.D. Cent. Code §§ 29-21-27, 29-21-28. Although the trial court could have questioned the offending juror more, the record showed that she was excused, and the other jurors indicated that they had not heard or received any information about the case other than that presented in the courtroom. Given the failure to establish prejudice, the decision was affirmed.

***State v. Weisz, 654 N.W.2d 416 (ND 2002).*** The defendant was convicted of terrorizing individuals. During a dinner break in the middle of deliberations, one of the jurors received a telephone call and learned his wife had been injured. The jurors decided to continue deliberating and ultimately found defendant guilty. On appeal, defendant argued the telephone call was an impermissible juror communication. The appellate court noted that while the telephone call was an impermissible communication under N.D. Cent. Code § 29-22-02, it did not rise to the level of a denial of a fair trial, and defendant had not shown prejudice or demonstrated he suffered a serious injustice by a juror receiving a telephone call to discuss a family situation. Since the phone call did not affect the defendant's substantial rights, the conviction was affirmed.

***State v. Breeding, 526 N.W.2d 465 (ND 1995).*** The defendant was convicted of murder and attempted murder. The defendant's private investigator observed jurors communicating with witnesses before deliberations began in the case. However, the defendant failed to raise the issue of potential misconduct before his conviction. Since there was no evidence presented to the original court of juror misconduct, the appellate court determined that the jury followed the trial judge's instructions about protocol. Since the defendant did not show an abuse of discretion by the trial court, the conviction and the denial of a motion for a new trial were affirmed.

## Ohio

***State v. Gunnell, 973 N.E.2d 243 (Ohio 2012).*** The defendant was convicted of murder, involuntary manslaughter, theft, and aggravated robbery. The convictions were reversed, but at a new trial, defendant was convicted once again. On appeal, the court of appeals reversed the convictions, and the State appealed to the Supreme Court of Ohio. The issue before the supreme court was whether the trial court acted unreasonably in addressing juror misconduct and in determining that a manifest necessity existed for a mistrial. The supreme court concluded that the trial court did not exercise its discretion soundly by inquiring of the juror to ascertain the scope of the prejudice, if any, to defendant before determining that the juror could not be rehabilitated and that a mistrial was necessary. The juror in question had done outside research into the definition of a term and a crime, in violation of an unequivocal instruction not

to do so. The information before the supreme court indicated that the juror understood that it was wrong to do so and that she had not tainted the jury with the information. However, the trial court failed to sufficiently determine whether a manifest necessity for a mistrial existed. The trial judge's comments suggested the he had simply concluded, based on some generalized sense of the juror's pleasant demeanor, that attempting to explore the scope of any prejudice would be an exercise in futility. Given the facts, the court affirmed the reversal of the convictions.

***State v. Spencer*, 694 N.E.2d 161 (Ct. App. Oh. 1997).** The defendant was convicted of prescribing methadone without a license. During defendant's trial, it was discovered that one of the jurors had told the other jurors that she had contacted 12 doctors about prescribing methadone. The trial court gave the jury an instruction regarding the parameters of the evidence before them for their consideration. On appeal, the court held the trial court was required to inquire of that particular juror to determine whether he or she remained impartial after the independent investigation. The court found that as to the competency of that particular juror, the court could not presume that the curative instructions overcame any prejudice and that defendant received the benefit of 12 impartial jurors. Further, the court ruled that Ohio R. Evid. 606(B) was not applicable to the juror misconduct because the jury had not reached a verdict. The court decided that the State failed to meet its burden to rebut the presumption of prejudice through the testimony of the jury foreman and the curative instructions. The court noted that while the other 11 jurors may have been impartial, there was no evidence to rebut the presumption of prejudice as to the individual juror in question without an inquiry by the trial court as required. As such, the appellate court reversed and remanded the conviction with directions that a new trial be held.

***State v. Taylor*, 598 N.E.2d 818 (Ct. App. Oh. 1991).** The defendant was convicted of knowingly selling a controlled substance. After the conviction, the defendant filed a motion for a new trial based on alleged juror misconduct. The trial court denied the motion, stating that defendant should have informed the court of the alleged misconduct prior to the conclusion of the trial. After defendant filed a motion for reconsideration, the trial court scheduled a hearing. Four witnesses testified that they overheard one juror tell other juror members during a recess that he had formed an opinion as to defendant's guilt or innocence. The juror in question denied forming such an opinion prior to the conclusion of the trial. Hearing testimony further indicated that two other jurors conversed with a defense witness during a recess about the witness's current and former employment. On appeal, defendant claimed the trial court erred in overruling his motion for a new trial and denying his motion for reconsideration. The appellate court held (1) that the record revealed that the trial court granted defendant's motion for reconsideration, and (2) that the trial court did not abuse its discretion in overruling the motion for a new trial because substantial evidence supported its determination that the three jurors did not commit juror misconduct. Given these facts, the appellate court affirmed the defendant's conviction.

## Oklahoma

***In re State in Interest of K.P.*, 275 P.3d 161 (Ct. Civil App. Okla. 2012).** The defendant lost parental rights over her two children and appealed. During a recess, one of the jurors spoke to his wife on the phone, and the defendant thought that she heard comments that would be prejudicial to her interest. The court questioned the juror and allowed both attorneys to do the same. At the end of the judge's inquiry, both parties were given the chance to make additional motions, and neither one did so. The appellate court said that judgment will not be reversed for misconduct of jury unless such misconduct is clearly shown. The appellate court also stated that the district court was in a better position to determine misconduct and prejudice than the appellate court instead, so since there was no clear error, it declined to reverse the decision of the trial court.

**Matthews v. State, 45 P.3d 907 (Ct. Crim. App. Ok. 2002).** The defendant was convicted of first degree murder, assault and battery, conspiracy, and unauthorized use of a motor vehicle. One of the jurors called an alternate juror who had not been selected for the jury and informed him of the guilty verdict before the sentencing hearing began. Since the contact occurred after the guilty verdict, the court said that the conversation did not prejudice that portion of the trial. The court then asked whether the conversation between the juror and former alternate, including a portion during which the alternate expressed support for the jury's guilty verdict, impacted the sentencing. Because the conversation only dealt with support for a guilty verdict and not anything to do with sentencing, the appellate court found that the defendant failed to prove prejudice. As a result, the appellate court found that the trial court correctly denied the defendant's motion for a new trial.

**Wacoche v. State, 644 P.2d 568 (Ct. Crim. App. Okla. 1982).** The defendant was convicted of rape. During questioning about an unrelated rape, the defendant made a statement to the questioning officer that was eventually used at trial. During trial, a juror commented to the bailiff that defendant was caught because he had done "the same thing" again. The juror agreed with the bailiff that the jury could not consider that. On appeal, despite its criticism of the trial court's procedure in conducting a hearing on defendant's motion for new trial, the court held that defendant was not denied a fair trial by the remarks between the bailiff and the juror. The court affirmed defendant's conviction.

#### Oregon

**State v. Baldeagle, 961 P.2d 264 (Ct. App. Ore. 1998).** The defendant was convicted of sexual abuse. One of the jurors spoke to a couple on the train who was in favor of the State's argument. The jury foreman testified that the juror in question did not speak to any of the other jurors about the conversation. Furthermore, all twelve jurors denied being prejudiced because of the conversation. Given these conditions, the appellate court found no abuse of discretion in the lower court's denial of a new trial.

**Transamerica Title Ins. Co. v. Ted L. Millar, Inc., 482 P.2d 163 (Ore. 1971).** The plaintiff sued the defendant for damages stemming from negligence in causing a fire. The jury returned a verdict for the defendants. During a recess before closing arguments, the plaintiff observed one of the jurors talking with the president of one of the defendant companies. The plaintiff did not raise the issue before the verdict was rendered. Since the plaintiff knew of the potentially objectionable conduct before the verdict and failed to object, the appellate court held that the issue was waived for appellate review.

#### Pennsylvania

**Commonwealth v. Szakal, 50 A.3d 210 (Superior Ct. Penn. 2012).** The defendant was convicted of second degree murder, robbery, theft, and conspiracy. Juror misconduct occurred when a juror had a daughter look up differences in jury instructions for degrees of murder and when witness spoke to jurors. The appeals court said the defendant must show prejudice in juror contact. The trial judge must determine prejudicial extraneous influences on an objective standard by looking at if it is a central issue, had new information, and was emotional in nature.

**Pratt v. St. Christopher's Hosp., 866 A.2d 313 (Penn. 2005).** This was a medical malpractice action. Jurors called friends in medical profession to discuss the case during deliberations. The appeals court applied an abuse of discretion standard. They stated that the test for prejudice is an objective test. If prejudice is shown or likely, they should further investigate by holding an evidentiary hearing to determine if there were extraneous influences and if the influence was likely to affect the verdict. Extraneous information should be judged based on its deviance from the evidence presented at trial.

## Rhode Island

***State v. Briggs*, 886 A.2d 735 (RI 2005).** The defendant was convicted of murder. The trial court found that a juror talked to his wife about the case. The trial judge dismissed the juror and the appeals court found that action was within its discretion since the juror violated the judge's order to refrain from talking with anyone about the case.

***State v. Chiellini*, 762 A.2d 450 (RI 2000).** The defendant was convicted of murder. A juror called an attorney friend to ask about distinction between first and second degree murder. The appeals court said that the trial court discretion will only be overruled if it is shown to be clearly wrong. The trial court must make adequate inquiry into misconduct when discovered to determine if a juror should be discharged. Calling the juror into chambers to ask questions is a sufficient inquiry especially when counsel does not ask for further actions.

## South Carolina

***State v. Bantan*, 692 S.E.2d 201 (Ct. App. SC 2010).** The defendant was convicted of armed robbery, kidnapping, and possession of weapon. A juror overheard a discussion of another crime committed by defendant and shared with jury. The appeals court stated, "Initially, the trial [court] must make a factual determination as to whether juror misconduct has occurred. If it has, the trial court must then determine whether the misconduct has improperly influenced the jury. In such cases, the trial court is in the best position to determine the credibility of the jurors; therefore, this court should grant it broad deference on this issue."

***State v. Carmack*, 694 S.E.2d 224 (Ct. App. SC 2010).** The defendant was convicted of assault and battery. The trial court determined that the jury foreman discussed the case with his girlfriend. The appeals court reviewed the case on an abuse of discretion standard and stated that the trial court has broad discretion in determining whether juror misconduct affects impartiality.

***Vestry and Church Wardens of Church of Holy Cross v. Orkin Exterminating Co., Inc.*, 682 S.E.2d 489 (SC 2009).** This was a breach of contract case. A juror discussed case with her mother, talked to painter about damage, and went to scene of damage. The appeals court reviewed the case on an abuse of discretion standard. The court said a trial court should investigate when it is misconduct brought to attention, which may include summoning jurors for sworn examinations. The judge should determine if outside influence affected jury by: number of jurors exposed, weight of evidence, and likelihood curative measures could fix. A new trial is only appropriate if the misconduct relates to material matter in dispute and biases one of the parties to affect the verdict.

***State v. Aldret*, 509 S.E.2d 811 (SC 1999).** The defendant was convicted of driving under the influence. There were premature deliberations. The appeals court indicated that if the allegation arises during trial, the court should conduct hearing to see if prejudicial. If allegation is after verdict, trial court can accept affidavits to determine if an evidentiary hearing is warranted.

## South Dakota

***Russo v. Takata Corp.*, 774 N.W.2d 441 (SD 2009).** In a wrongful death action, a juror made a Google search when he received the jury summons. His information was brought forth in deliberations to five other jurors but not revealed in voir dire. An evidentiary hearing was held. The court used a factor test to determine if there was prejudicial influence. The relevant factors are (1) whether extrinsic evidence

was received by jury and by what manner; (2) whether the extrinsic evidence was available to jury for substantial amount of time; (3) whether the jury discussed and considered the extrinsic evidence extensively; (4) whether the extrinsic evidence was introduced before the jury reached its verdict; and (5) whether the extrinsic evidence was reasonably likely to affect the verdict.

***State v. Wilkins*, 536 N.W.2d 97 (1995).** After reaching a verdict but before announcement, the foreperson told the judge that he used an outside book on the role of the jury duty in deliberations. The judge ordered an evidentiary hearing and because jurors were negatively affected by it and it helped reach the verdict, granted a new trial.

## Tennessee

***State v. Adams*, 405 S.W.3d 641 (Tenn. 2013).** The defendant was convicted of first degree murder. An alternate juror left note for jury foreman saying that both alternates thought the defendant guilty. The appeals court said that the trial court's factual findings are reviewed de novo with presumption of correctness. The court's conclusions of law are reviewed purely de novo. The moving party must show admissible evidence to make initial showing that jury was exposed to outside information. The trial court should then investigate and weigh following factors: nature and content of influence, number of jurors exposed, manner and timing, and weight of evidence at trial.

***Mayo v. Shine*, 392 S.W.3d 61 (Ct. App. Tenn. 2012).** This was a medical malpractice case. A juror brought a newspaper article on children with medical condition brought into jury room but it was not discussed. The appeals court stated that an appellant must prove prejudice with clear and convincing evidence to show that extraneous information could be prejudicial.

## Texas

***Sharpless v. Sim*, 209 S.W.2d 825 (Tex. App. 2006).** After vehicle accident, Sim sued driver and company for negligence. One of the jurors researched the driver's traffic history, but she said in hearing that it did not affect her decision. The appeals court indicated that a trial court must decide that (1) misconduct occurred, (2) the misconduct was material, and (3) it reasonably appeared that injury probably resulted.

***Golden Eagle Archery, Inc. v. Jackson*, 24 S.W.3d 362 (Tex. 2000).** Respondent consumer won a products liability judgment against petitioner manufacturer but moved for a new trial because of juror misconduct and on other grounds. The appellate court reversed the trial court's denial of a new trial holding that Tex. R. Civ. P. 327(b)'s prohibition of juror testimony about deliberations denied respondent his only evidence of misconduct; thus denied him a fair trial. The court reversed. While a juror's failure to disclose bias potentially justified a new trial, proof of it had to come from some source other than fellow juror testimony about deliberations. Tex. R. Civ. Evid. 606(b) and Tex. R. Civ. P. 327(b) precluded evidence from a juror of other jurors' bias or discussion of improper matters during deliberations. A juror's comment to another juror during a trial break, not during deliberation, that she did not believe in lawsuits like respondent's, did not prove she had lied on voir dire when she had said she could be fair. Her comment may have been referring to suits she thought lacked merit. Rules 327(b) and 606(b) did not deny due process or fairness in that other trial procedures protected against undesirable jurors.

***Picazo v. State*, 1999 Tex. App. LEXIS 4848.** Appellant sought review of a judgment of the trial court convicting him of murder and assessing a punishment of 35 years confinement. The court affirmed the conviction and held that appellant waived his right to contest juror misconduct because he failed to object

or move for a mistrial at the conclusion of the hearing regarding the juror's misconduct. Moreover, the court held that the trial court did not abuse its discretion in denying appellant's motion for a new trial because at the hearing the juror assured the court that she would decide the case based on the court's charge. In addition, none of the other jurors read the additional definition of the charge that the one juror inappropriately obtained from the dictionary.

## Utah

**Taylor v. State, 270 P.3d 471 (Utah 2012).** The defendant pled guilty to two counts of murder and was sentenced to death at the penalty phase by a jury. The defendant made various claims of juror misconduct but they were procedurally barred because they could have been raised prior to the present habeas action.

**State v. Allen, 108 P.3d 730 (Utah 2005).** Defendant was convicted of aggravated murder. Juror misconduct when juror spoke with spouse about earlier trial for same case. The court concluded that the district court did not abuse its discretion. The juror's comment was apparently brief and contained no substantive information concerning the mistrial motion. Additionally, the jury did not, in fact, discuss Allen's motion for a mistrial.

**State v. Tenney, 913 P.2d 750 (Ct. App. Utah 1996).** Defendant was convicted of selling unregistered securities and securities fraud. Juror misconduct occurred when a juror discussed case with co-worker. Based upon the evidence before the trial court, the appeals court couldn't conclude that the court abused its discretion in ruling that there was no indication that the juror's improper actions would affect the juror's deliberation in the case. While the conversation was clearly improper, it did not involve anyone connected with the proceeding, it was brief, and the juror was aware that he was not permitted to form a final opinion concerning defendant's guilt or innocence until the conclusion of trial.

**State v. Day, 815 P.2d 1345 (Ct. App. Utah 1991).** Defendant was convicted of manslaughter. Juror misconduct when witness for state and juror shared a car ride without conversation. The court found that defendant's counsel knew of alleged improper contact between a witness and juror, but failed to raise an objection. The issue was, therefore, waived for appeal. The court held that the prosecutor's assertions in closing argument were within allowable bounds and that there was sufficient evidence to convict defendant of manslaughter.

## Vermont

**State v. Abdi, 45 A.3d 29 (Vt. 2012).** The defendant, of Somali background, was convicted of aggravated sexual assault. Juror misconduct occurred when juror looked up Somali culture online to help understand its customs. The appellate court found the defendant must first show extraneous influence that has potential to prejudice; then, the state must show beyond a reasonable doubt that it did not prejudice the jury. The trial court held a hearing, questioned jurors, and documented the proceedings as required. The court must look at the totality of evidence including factors of nature and content, relative importance, inflammatory in nature, extent of consideration, evidence to support verdict strong or weak.

**State v. Squiers, 896 A.2d 80 (Vt. 2006).** The defendant was convicted of a lewd act with a child. Juror misconduct occurred when a juror looked up information at a library. A juror's act of going to the public

library during a lunch break and reading the relevant statutes was not prejudicial as the juror agreed to follow jury instructions, and the trial court cured any possible prejudice to the jury.

***State v. Bartlett*, 407 A.2d 163 (Vt. 1979).** The defendant was convicted of passing counterfeit currency. Juror misconduct occurred when one juror spoke about opinions and decisions before deliberation and communication with a court officer. Defendant claimed a conversation between the officer and members of the panel, violated the oath contained in Vt. Stat. Ann. tit. 12, § 5808. However, the court found that defendant was not prejudiced because the episode resulted in the removal of a juror who was patently hostile to defendant.

## Virginia

***Riner v. Commonwealth*, 601 S.E.2d 555 (Vir. 2004).** The defendant was convicted of first degree murder. He based his appeal on juror misconduct on one juror's actions involving discussing the case before deliberation, contacting a third party about newspaper headlines, and the juror was dismissed before deliberations. The defendant claimed his motion for a mistrial should have been granted. The appeals court used an abuse of discretion standard and determined that the actions of the sole juror did not taint the jury as a whole and removing that juror was a sufficient remedy.

***Evans v. Commonwealth*, 572 S.E.2d 481 (Ct. App. Vir. 2002).** Following the trial, the defense presented a writing by a juror asserting that the juror was approached by one of defendant's relatives during the trial and inadvertently informed of defendant's past conduct and character. Later, the juror provided an affidavit in which he admitted to only briefly meeting the relative. An investigator for the defendant then provided an affidavit wherein he stated that the assertions obtained by him in the juror's first writing were true. Furthermore, the Commonwealth contended that defendant could not challenge the trial judge's sustaining the Commonwealth's objection to a witness's testimony at trial, because defendant failed to make a proper proffer of the testimony that was excluded. On appeal, the court found that the trial judge should not have dismissed the juror misconduct motion without first conducting an evidentiary hearing, as the juror's statements and the investigator's affidavit were sufficient to warrant an evidentiary hearing. Finally, because the record did not contain a proffer of the witness's expected testimony, the appellate court could not determine whether the judge erred in sustaining the objection to her testimony. The judgment was reversed, and the case was remanded for an evidentiary hearing.

***Haddad v. Commonwealth*, 329 S.E.2d 17 (Va. 1985).** The defendant was charged with first-degree murder. During recess, a juror commented that the defense attorney's "client is not going to get off" to another local attorney. Circuit Court denied motion for mistrial for juror misconduct, but the Supreme Court of Virginia reversed conviction and remanded for new trial.

## Washington

***Sheffield v. Goodyear Tire & Rubber Co.*, 151 Wash. App. 1052 (Ct. App. Wash. 2009).** This was an employment discrimination case in which jury found for plaintiff. Juror misconduct occurred when a juror consulted the internet to determine defendant's annual earnings when awarding damages. Juror shared information with jury. The appellate court found that a trial court has discretion in deciding whether misconduct occurred and whether it affected the verdict. It is held to a standard of abuse of discretion. The court must make an objective inquiry to determine if there are reasonable grounds of prejudice.

***State v. Boling*, 127 P.3d 740 (Ct. App. Wash. 2006).** The defendant was found guilty of manslaughter. Juror misconduct occurred when a juror looked up alcohol toxicity on the internet. The appeals court held that the trial court's decision should be given deference and only changed if it is an abuse of discretion. The trial judge mailed out questionnaire to jurors when discovered misconduct. The judge looked objectively at the misconduct so see if it could have affected the jury, not if it actually did.

***State v. Eggleston*, 118 P.3d 959 (Ct. App. Wash. 2005).** The defendant was convicted of murder and assault. Juror misconduct occurred when a juror communicated with a witness about previous trials during deliberation. The appellate court held that a new trial is not appropriate if there is no reasonable probability that the extraneous information affected verdict.

### West Virginia

***State v. Cecil*, 655 S.E.2d 517 (Ct. App. WV 2007).** The defendant was convicted of sexual abuse. The case was reversed by the appeals court because a juror used social media to investigate the case as well as communicating with third parties about the case. The appeals court stated, "Having carefully reviewed the record, we conclude that the cumulative effect of each of the instances of juror misconduct discussed above made it impossible for the appellant to receive a fair trial."

***State v. Sutphin*, 466 S.E.2d 402 402 (W. Va. 1995).** The defendant was convicted of murder. Two of the jurors knew a witness and brought it to the attention of court but were not dismissed. Before deliberation, one juror went to the witness's house. When this information came to light, the court held a hearing on this issue. The communication was found to be non-prejudicial communication and the retrial motion was denied.

***State v. Richards*, 466 S.E.2d 395 (1995).** The defendant was convicted of murder. One of the jurors used a dictionary to define "malice." There was no hearing held, but the trial court denied a new trial. The Court of Appeals ordered a hearing in the case to determine the possibility for prejudice.

### Wisconsin

***Manke v. Physicians Ins. Co. of Wisconsin, Inc.*, 712 N.W.2d 40 (Ct. App. Wis. 2006).** The defendant, found liable for medical malpractice, filed a motion to set aside the verdict and requesting a new trial on the grounds that a juror brought a dictionary definition of "neglect" into the jury room during deliberations. The circuit court, determining that the definition was extraneous information and was prejudicial, set aside the verdict and ordered a new trial. The Court of Appeals, though finding errors in the circuit court's reasoning, affirmed the decision. The Court of Appeals explained that a motion for a new trial on the ground of prejudicial extraneous information requires the circuit court to make a number of underlying evidentiary, factual, and legal determinations, and that the appeals court applies different standards of review to these underlying determinations depending on the nature of the determination. The court must first decide if there is clear evidence of misconduct, and must then determine if the extraneous information constitutes prejudicial error requiring reversal of the verdict. In a civil case the prejudice inquiry asks whether there is a reasonable probability that the extraneous information would have a prejudicial effect upon a hypothetical average juror. Though a party seeking to set aside a verdict on the ground of prejudicial extraneous information is not automatically entitled to an evidentiary hearing at which jurors testify, they may obtain one upon a proper showing.

**Castenada by Correll v. Pederson, 518 N.W.2d 246 (Wis. 1994).** The defendant, found liable for medical malpractice, filed a motion requesting a new trial on the grounds that a juror obtained and shared with the jury a statistic on the average medical malpractice award. The trial court denied the motion, and the court of appeals affirmed. The Supreme Court of Wisconsin affirmed in part and reversed in part, concluding that the statistic obtained and shared was prejudicial to the determination of damages and the verdict as to damages must be reversed, but concluding that the information had no prejudicial effect on the jury's findings on negligence and causation. The Supreme Court remanded for a new trial solely on the issue of damages. In reaching this determination, the court explained that the party seeking a new trial has a three-part burden of proof: they must show that (1) the juror testimony is admissible, (2) extraneous information was improperly brought to the jury's attention, and (3) extraneous information was potentially prejudicial. The court must then make evidentiary and legal determinations to determine whether the extraneous information constitutes prejudicial error requiring reversal of the verdict. The verdict is to be reversed if there is a reasonable probability that the error would have a prejudicial effect upon a hypothetical average jury.

**Kuehn v. Kuehn, 104 N.W.2d 138 (Wis. 1960).** Plaintiff brought suit to recover half of the proceeds of government bonds, promissory notes, and a savings account from his sister-in-law, on the ground of undue influence. The jury, acting in an advisory capacity, found undue influence and held for the plaintiff, and the judge adopted their recommendation. The defendant appealed this verdict, arguing among other things that juror misconduct influenced the verdict. Two jurors had separate conversations with plaintiff witnesses, and though the judge was timely informed of these conversations and quickly admonished jurors, on appeal defense takes issue with the judge's failure to inquire into the incidents. The Supreme Court of Wisconsin held that had the defendant wanted inquiry into the incidents, she should have requested such prior to the rendering of the verdict and should not speculate on what the outcome would have been after the fact. Nothing on the record indicates a new trial is warranted, and as the trial court is in the best position to assess this, an appellate court will not grant a new trial unless there is a clear abuse of discretion by the trial court. Additionally, in this case, the fact that the jury was acting only in an advisory capacity and the judge was the trier of fact, meant that the judge could disregard the jury's advice.

## Wyoming

**Pena v. State, 294 P.3d 13 (Wyom. 2013).** The defendant, convicted of felony larceny, filed a motion for a new trial based on alleged improper communications with the jury specifically alleging that witnesses for the State talked about aspects of the case in front of prospective jurors who might have been seated as trial jurors. The district court denied his motion, finding that he had waived his right to ask for a new trial by failing to bring the alleged communications with jurors or potential jurors to the court's attention during trial. The district court determined as a matter of law that a challenge based on exposure of jurors to prejudicial information is waived if known to a defendant or his counsel during trial but not raised at that time. The standard of review for this legal issue is de novo. The trial judge also had to decide whether the facts presented at the evidentiary hearing on the new trial brought the case under the waiver rule he ultimately applied. A court may grant a defendant's motion for a new trial "if required in the interest of justice." The standard of review is abuse of discretion. The appellant bears the burden of proving an abuse of discretion. The Supreme Court of Wyoming affirmed the district court's decision.

**Eaton v. State, 192 P.3d 36 (Wyom. 2008).** The defendant, convicted of first degree murder, among other crimes, made a number of arguments as to why his convictions should be reversed, including juror misconduct. One of the jurors went to the crime scene and then shared his findings with the rest of the

jury. In affirming the district court's denial of the motion for a mistrial, the Supreme Court of Wyoming made clear that the juror's conduct was improper and remedial action of some sort was required, but felt that the district court adequately addressed the misconduct by excusing the juror and seating an alternate in his place. The Supreme Court explained that to make out a case for a mistrial, the defendant would need to demonstrate that a juror's misconduct operates in such a manner so as to prejudice his right to a fair trial. The decision to grant a mistrial rests within the sound discretion of the trial court. Granting a mistrial is an extreme and drastic remedy that should be resorted to only in the face of an error so prejudicial that justice could not be served by proceeding with trial.

***Distad v. Cubin*, 633 P.2d 167 (Wyom. 1981).** Appellant, an administrator of a deceased's estate, challenged the verdict in favor of appellees, a physician and a hospital, on the administrator's wrongful death action arguing, among other things, that juror misconduct was prejudicial to the case. Though a juror spoke with a potential witness outside of court, the court found that they did not discuss the facts of the case. The Supreme Court of Wyoming found nothing in the record to support the appellant's assertion that the juror had discovered or been influenced by anything from the conversation with the doctor. While it is improper for a juror to have any out-of-court communications concerning a case with a witness in the case, "Where there has been misconduct on the part of a juror, the grant or denial of a motion for a mistrial is a matter within the sound discretion of the trial court. Prejudice to the moving party will not be assumed; it must appear probable from the record." The Supreme Court held that "[a] mere showing of conduct or communication between a juror and a witness is not sufficient to mandate a mistrial. Prejudice must be shown," and said that they would defer to the district court's determination as to whether prejudice occurred unless there is no rational basis for its finding. In this case, they found no reason to disagree with the trial court's determination that no prejudice occurred.

#### District of Columbia

***U.S. v. Morrow*, 412 F. Supp. 2d 146 (D.D.C. 2006).** The defendants, who were convicted on various federal charges, moved for a new trial on grounds of an alleged Brady violation and juror misconduct. On the juror misconduct claim, defendants say the misconduct occurred when prejudicial, extraneous information was introduced into the deliberations. Specifically, there were two alleged visits by jurors to crime scenes, an allegation that members of the jury read a newspaper article which had been admitted into evidence for purposes other than the truth of its contents, and the contention that members of the jury maintained contact with a dismissed juror. The district court found that none of the alleged incidents could have prejudiced defendants and thus did not provide the basis for a new trial. When an extraneous influence is shown, the court must apply an objective test, assessing for itself the likelihood that the influence would affect a typical juror. Though the extraneous information is "presumptively prejudicial," such a presumption is not conclusive, and may be overcome by a showing that the extra-record information was harmless. While the court may vacate any judgment and grant a new trial if the interest of justice so requires, the granting or denial of a motion for a new trial is committed to the sound discretion of the trial court judge, and is reviewed only for abuse of discretion.

***Wilson v. U.S.*, 663 A.2d 558 (Ct. App. DC 1995).** The defendant, convicted of unlawful distribution of cocaine, challenged his conviction on the ground that juror misconduct denied him a fair trial and that he was entitled to a new trial. A juror, a former U.S. Attorney, contacted a current U.S. Attorney to ask an evidence question, but the current U.S. Attorney did not provide any information. The juror also apparently made negative remarks to other jurors about defense counsel. The trial judge held a hearing only on the improper contact and determined that no new trial was warranted, concluding that while the juror should have known better, the contact did not cause any actual harm or prejudice to defendant. The

Court of Appeals affirmed the district court's decision to only hear testimony with regard to one issue, stating that a judge does not abuse her discretion by refusing to hold a hearing on allegations which, even if true, would not warrant interference with the jury's verdict. A new trial was unwarranted because there was no claim that the juror brought any additional facts to the attention of the jurors.