

Holdout juror in Bobby Ferguson trial didn't tell the whole truth

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The holdout juror in Bobby Ferguson's bid-rigging case, which ended in a mistrial, never revealed that her husband has a felony conviction involving cocaine, the Free Press has learned.

Nor did she disclose that she ran a day care center that the State of Michigan investigated or that she and her husband once filed for bankruptcy.

Had prosecutors known this, legal experts say, red flags may have gone up that ultimately could have led to the juror being rejected -- possibly altering the outcome of the monthlong trial.

Failing to tell the truth during jury selection is considered perjury and can lead to criminal charges. The U.S. Attorney's Office, FBI and U.S. District Judge David Lawson declined to comment.

The juror repeatedly has declined to talk to the Free Press about the trial, which ended in June.

Legal experts say the Ferguson case highlights a pervasive problem in the criminal justice system: untruthful or misleading jurors. When prospective jurors don't tell the truth or hide information that could reveal a bias, they say, lawyers can get blindsided come verdict time.

"The whole integrity of the system depends on everybody telling the truth, the whole truth and nothing but the truth ... this also applies to the jury," said Phoebe Ellsworth, a law and psychology professor at the University of Michigan who has researched jury behavior and decisions.

Ellsworth said most jurors are honest, but especially in high-profile cases, people with an ax to grind with the government try to get seated to acquit and those who dislike the defendant try to get on to convict.

Both sides in former Detroit Mayor Kwame Kilpatrick's pending public corruption trial are trying to avoid just that problem.

"A lot of money goes into a trial, especially a big trial -- where you're likely to get these jurors who want to get on the jury. And all that work is basically down the drain," Ellsworth said.

No hand-raising

It was May 8, the first day of jury selection in the trial against Ferguson, in which he and two business associates were charged with rigging bids to help Ferguson's company win a nearly \$12-million contract for a low-income housing project.

An African-American woman from Oakland County appealed to both sides. She said she was a project manager for one of the Detroit Three automakers and was involved in a parent-teacher organization.

The only thing she knew about Ferguson, she said, was that he was friends with Kilpatrick and he had received some bids.

She said most of what she had heard about Kilpatrick in the news had been negative, but it hadn't tainted her view of Ferguson. She pledged to be fair. But she didn't answer yes to any of the judge's questions that could have raised flags.

There were no jury questionnaires in this case -- like there are in the Kilpatrick case -- but Lawson asked a series of routine questions to the jury pool. Among them: Have you or any close family members or relatives ever been involved in any criminal matter, either as a defendant, witness or victim?

She didn't raise her hand.

Lawson asked whether anyone had been involved in a lawsuit or civil proceeding. She didn't raise her hand.

But Wayne County Circuit Court records show that her husband has a 1989 felony conviction for delivery/manufacturing of less than 50 grams of cocaine. He was sentenced to probation but violated it numerous times, per court records.

In addition, the woman and her husband filed for bankruptcy in 2002, according to court records.

And the Michigan Department of Human Services investigated her child care center in Detroit in 2009 over licensing violations.

Among the cited problems: the juror, who was the program director, wasn't on the site often enough; she never returned messages, and the center didn't have a required landline telephone.

The woman, whom the Free Press is not naming because she has not been charged with any wrongdoing, became the center of controversy when Ferguson's case ended in a mistrial. Multiple jurors told the Free Press they voted 10-1 -- with her as the lone no vote -- to convict Ferguson on seven of eight counts. They were divided on his two codefendants.

Details speak volumes

University of Michigan law professor David Moran said details, such as criminal histories or exposure to the justice system, are important in the jury selection process.

"If someone has had a particularly negative experience with the criminal justice system, that would raise a red flag for the prosecution," Moran said.

On the flip side, Moran said, defense lawyers would want to vet out jurors who have been victims of a crime and are pro-law enforcement.

However, Ellsworth said, failing to disclose such details is not always a sign that a hidden agenda is at play. The omissions may be caused by embarrassment, fear or because prospective jurors don't think the information is relevant, she said.

"I think you gotta be real careful in a high-profile case when someone is sitting there giving all the right answers. It appears they may have some other motive," said prominent local defense attorney Anthony Chambers. "If you have someone up there who's a wild card, that doesn't help either side."

Chambers represented one of Ferguson's codefendants in the bid-rigging trial. He declined to comment on the juror who withheld information.

The case is going to be retried next August.

Kilpatrick jury concerns

With jury selection expected to wrap up in the Kilpatrick trial early this week, both sides have raised concerns about jurors not appearing truthful.

Their names are being withheld from everyone but the attorneys, but even the attorneys are prohibited from doing background checks on them.

Of the 60 people now in the jury pool, all said they embrace the presumption of innocence and consider themselves to be fair.

Some have revealed a past history with the law, including a man who disclosed convictions for domestic assault and possession of marijuana and a woman who said she was a plaintiff in a sexual harassment lawsuit.

Defense lawyers say some people are trying too hard to get on the jury, especially in saying they have no opinion about the ex-mayor. Kilpatrick; his father, Bernard Kilpatrick; Ferguson, and ex-city water boss Victor Mercado are charged with running a criminal enterprise through the mayor's office to enrich themselves.

Prosecutors have been skeptical, as well -- especially with one woman who said she couldn't convict Kilpatrick and then two minutes later changed her mind.

"There have been some people who have raised suspicion, without question," said Chambers, who has attended some of the jury selection proceedings.

Defense attorney Michael Rataj, one of three lawyers representing Ferguson in the corruption trial, has been skeptical about several prospective jurors he says are angling to get on the jury.

"It's a phenomenon that I haven't experienced before in 24 years of practicing law," Rataj said one day after jury selection. "I think anybody who wants to sit on a jury that bad has to have an ulterior motive."

Veteran jury consultant Philip Anthony said the system relies on honesty.

"The integrity, honesty and sound moral judgment of the prospective juror comes into play when they withhold any level of information or tell less than the complete truth," said Anthony, whose firm worked on the O.J. Simpson trial. "When jurors are not forthright, the entire system begins to break down. ... The entire system relies on the truthfulness of jurors."