

COOS, SS.

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

Case No. 214-2019-CR-00078

STATE OF NEW HAMPSHIRE

vs.

VOLODYMYR ZHUKOVSKYY

REPORT OF COURT-APPOINTED JUROR AMICUS COUNSEL

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COOS SUPERIOR COURT
2022 NOV 18 P 1:29

NOW COMES Philip R. Waystack, Esquire, Court-Appointed Amicus Counsel in the above-referenced case and submits the following report pursuant to the Court’s October 19, 2022 order:

Amicus counsel has had the opportunity to have conversations with each juror who served on the jury for the Zhukovsky trial.¹ Each juror that amicus counsel, or amicus counsel’s paralegal, spoke to regarding this request stated that he/she does not want to have his/her names or addresses released to the Boston Globe, or to any other person or media source. Most jurors were willing to discuss their reasoning for wanting to remain anonymous, and it appeared to amicus counsel that their views were strongly held. Some jurors expressed uncomfortable circumstances which occurred to them following their jury service, including uncomfortable circumstances at their workplaces and in their communities. (Juror H) The reasoning for the unanimous views of the jurors appears to be based on several areas of common interest.

All jurors had heard or had been made aware of public comments questioning their verdict made by leaders in our state government.² They were surprised and, to a person, expressed that such comments were inappropriate, incorrect, and caused harm to the public acceptance of the integrity of their verdict. As an example, one juror shared that this was the second time the juror had the experience of serving on a jury. The juror stated that he/she felt that both of the jury verdicts in which he/she took part were just verdicts and the result of proper consideration of the evidence and credibility of the witness testimony in each case. The same juror expressed that after the comments questioning the verdict in this case, he/she would not be willing to serve on a jury again. (Juror B) This appears to suggest that the statements by state

¹ As of the date of this report, amicus counsel and/or amicus counsel’s paralegal has spoken with all seventeen (17) jurors (a few jurors spoke with amicus counsel’s paralegal in response to the letter sent to the jurors).

² Every juror either heard first hand or became aware of the statements of the Governor of our state, and many jurors heard the comments by the Attorney General, stating that the verdict was unjust. This was a seminal issue to each of them.

government leaders questioning the verdict in this case may have a chilling effect on future jury service by those who may be aware of the negative public comments made soon after this jury returned its verdict.

Most jurors had either read or became aware of news coverage of the case in the print media, including the Boston Globe, following their jury service. The jurors reported that they did not read or discuss the media reports until after the trial had concluded and the jury had rendered its verdict. The jurors were aware that there was significant coverage which questioned how they could reach such a result. No juror felt that he or she was required to justify his or her verdict in response to the media coverage. Not a single juror expressed any interest in having their names or addresses released to the media in general, or the Boston Globe, more specifically.

Not surprisingly, the many jurors who discussed the negative public comments explained that those making comments had not sat and heard all of the witness testimony and evidence as they had. Some commented on specific witnesses or specific evidence which supported their verdict, but amicus counsel sees no need to invade the privacy of the jury's deliberation in order to provide the juror's response to the Court. Amicus counsel will, however, offer his opinion that the jurors who served during Mr. Zhukovskyy's trial, en masse, did seem to understand well the instructions they were given by the Court about how to go about their jobs as jurors.

Most jurors expressed that they were comfortable discussing the issues with amicus counsel about public disclosure of their identities. They appeared to be resolute in the integrity of their verdict. Moreover, each juror who spoke in some detail about their jury service in this case appropriately identified the quality of witness testimony and probative value of the evidence as the basis for their verdict. Some jurors specifically discussed the effect that the tragedy of the results of the collision had on all involved, including the families of those who perished or were injured in the vehicle/motorcycle collision as well as the defendant. But all jurors appeared to rely upon the consideration of the evidence and witness testimony as being the lodestar which guided their decision.

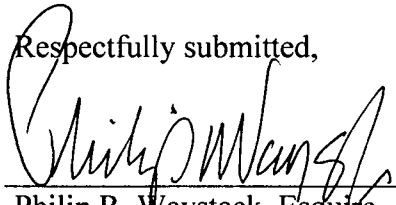
As mentioned previously, many jurors knew about the negative comments by public officials shortly after they returned their verdict. Likewise, some expressed more than irritation about the negative reports, not only in the print media but those which appeared in social media. One juror stated that it was necessary for him/her to shut down his/her social media sources for some time because the negative comments about the verdict were so discouraging.(Juror N) Some expressed actual concern for personal safety after the reaction to the verdict. One stated that he/she carried a pistol for personal protection for some time after the verdict.(Juror D) Another juror stated that he/she was in a bus station in Manchester after the verdict and a stranger started conversing with the juror and mentioned the Governor's remarks about the verdict and questioned the verdict.(Juror P) Another juror stated that such negative treatment of the verdict from so many sources would likely have a chilling effect on the ability of the courts to seat jurors in future cases. (Juror F)

Based on the conversations that amicus counsel had with the jurors, none want their personal information or identities released to any source. Their reasons for not wanting release

of personal information appear to be based on concerns for their personal safety. Moreover, the jurors expressed feeling that they followed the instructions given to them by the Court and reached a fair and just verdict. None see any reason to have to respond to questions or to justify their collective jury decision to print media or social media, or for that matter to fellow workers at their jobs or members of the communities in which they live. For all these reasons amicus counsel respectfully opines that the jurors' personal information should not be released to any source.

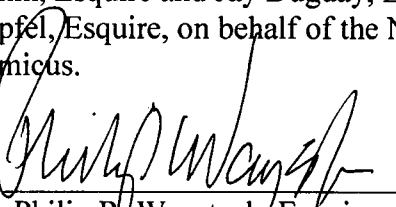
The jury trial is enshrined in our state constitution; it is at the center of judicial proceedings in our trial courts. The issues raised by the petition for release of the jurors' personal information, to use one juror's words, will likely have a chilling effect on the ability of the trial courts to seat jurors in the future. Seen through that prism, perhaps here the public's right to information must be subordinate to the ability of the courts to provide constitutionally protected jury trials.

Dated: November 18, 2022

Respectfully submitted,
By: 
Philip R. Waystack, Esquire
Amicus Counsel

CERTIFICATION

I hereby certify that a copy of the foregoing has been mailed this day to John G. McCormick, Esquire, Coos County Attorney, Scott D. Chase, Esquire, Joshua L. Speicher, Esquire, Assistant Attorneys General, William L. Chapman, Esquire, Jeremy D. Eggleton, Esquire, Orr & Reno, P.A., Petitioner's counsel, Steve Mirkin, Esquire and Jay Duguay, Esquire, NH Public Defender's Office, defense counsel and Gary Apfel, Esquire, on behalf of the New Hampshire Association of Criminal Defense Lawyers, as amicus.

By: 
Philip R. Waystack, Esquire