11-3776

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff/Appellee,

vs.

WILLIAM STEGMEIER,

Defendant/Appellant.

BRIEF OF *AMICUS CURIAE* BY THE FULLY INFORMED JURY ASSOCIATION

In Support of Appellant and in Support of Reversal

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BRIEF OF *AMICUS CURIAE*, THE FULLY INFORMED JURY ASSOCIATION

The Fully Informed Jury Association (hereinafter "FIJA") respectfully submits this brief as *amicus curiae.*

The Fully Informed Jury Association (FIJA) is a non-profit charitable organization dedicated to educating the public on the history and heritage of trial by jury. FIJA works to restore and protect the role of the juror, and the institution of trial by jury. The Association sponsors educational seminars for legal professionals, publishes commentary, and develops and presents Amicus briefs when the institution of the jury is at issue. It has no stockholders and does not issue stock.

CORPORATE DISCLOSURE STATEMENT

In compliance with Federal Rules of Appellate Procedure 26.1 and Eighth Circuit Rule 26.1A, the *amicus* is not a corporation that issues stock, nor does it have a parent corporation that issues stock.

INTEREST OF *AMICUS CURIAE*

The Fully Informed Jury Association is America's oldest and largest educational association solely dedicated to the education of jurors regarding their purpose and role under the Constitution. The Fully Informed Jury Association (FIJA) is a nationwide, non-profit, nonpartisan education and research public policy institute incorporated in Montana since 1991. The FIJA mission is to

educate Americans regarding the role of the jury in our justice system and the preservation of the full function of the jury as the final arbiter in our courts of law. FIJA generates revenue through seminar fees and the sale of FIJA publications and materials. FIJA is a tax-exempt educational foundation under Section 501(c)(3) of the Internal Revenue Code.

No person or entity other than the Fully Informed Jury Association made a monetary contribution to the preparation or submission of this Brief.

The *amicus curiae* Fully Informed Jury Association submits this brief in support of Appellant, and in support of Reversal. The Brief of the Appellant is adopted and incorporated by reference.

SUMMARY OF THE ARGUMENT

This brief addresses the interests of both juries and criminal defendants. Accordingly, two points are highlighted: (1) the Appellant, William Stegmeier, was denied his right to jury trial by a combination of coercive jury instructions and a special verdict form demanding that the jury partially explain their verdict; and (2) the jury that convicted Stegmeier was denied its right to fully and impartially consider the question of Stegmeier's guilt or innocence free from coercion and intimidation. By constitutional design, juries are to act as unfettered protectors, as checks on the abuses of government, and as the conscience of the community. Stegmeier's jurors were deprived of their rights by the District Court's instructions

which warned them that they might be punished if they considered their own conscience or other matters outside the control of the Court, and by instructions claiming they "must" find Stegmeier guilty if the government met its burden of proof. The District Court's special verdict form deprived the jury of its constitutional right and authority to issue a general verdict without explaining its grounds for doing so.

ARGUMENT

I. The District Court's jury instructions and special verdict form violated Stegmeier's rights to due process and trial by jury.

The jury Stegmeier was provided to act as his guardian against governmental overreach was subjected to coercion by the District Court's by jury instructions which ordered the jury to convict Stegmeier if the government met its burden of proof, and which suggested the jurors might be punished or prosecuted if they failed to do so. Similar coercion was applied in the District Court's inappropriate use of a special verdict form.

By constitutional design, trial by jury is an important check on the power of the government. The primary purpose and role of juries is not to act as a mere fact-finding device. (Professional fact-finders, judges or government investigators could perform such duties as well as jurors, if not better.) If the government seeks to abuse its power or authority, the jury's function as an obstacle to such arbitrary exercise of authority becomes paramount.

Jurors must be free to balance their own consciences along with the evidence at trial, and it has never been the law that juries must convict defendants in every case where the government meets its burden of proof. *See United States v. Wilson*, 629 F.2d 439, 443 (6th Cir. 1980) ("[A] jury is entitled to acquit the defendant because it has no sympathy for the government's position. It has a general veto power, and this power should not be attenuated by requiring the jury to answer in writing a detailed list of questions or explain its reasons"); *United States v. Reed*, 147 F.3d 1178, 1180 (9th Cir. 1998) ("Special findings may "partly restrict [the jury's] historic function, that of tempering rules of law by common sense brought to bear on the facts of a specific case") *Jackson v. Virginia*, 443 U.S. 307, 317 n.10 (1979) ("To be sure, the factfinder in a criminal case has traditionally been permitted to enter an unassailable but unreasonable verdict of 'not guilty.' This is the logical corollary of the rule that there can be no appeal from a judgment of acquittal, even if the evidence of guilt is overwhelming").

As the Fourth Circuit observed in *United States v. Moylan*, 417 F.2d 1002, 1006 (4th Cir. 1969):

> "We recognize ... the undisputed power of the jury to acquit, even if its verdict is contrary to the law as given by the judge and contrary to the evidence. This is a power that must exist as long as we adhere to the general verdict in criminal cases, for the courts cannot search the minds of the jurors to find the basis upon which they judge. If the jury feels that the law under which the defendant is accused is unjust, or that exigent circumstances justifies the actions of the accused, or for

> any reason which appeals to their logic or passion, the jury has the power to acquit, and the courts must abide by that decision."

The Sixth Amendment right to trial by jury "includes, of course, as its most important element, the right to have the jury, rather than the judge, reach the requisite finding of 'guilty'" *Sullivan v. Louisiana*, 508 U.S. 275, 277 (1993). In *Stein v. New York*, 346 U. S. 156, 178 (1953), the Supreme Court recognized that the right to jury trial is firmly grounded in the jury's right to deliberate secretly, which, by constitutional design, allows the jury to return verdicts that defy logic or fly in the face of the perceptions and judgments of judges, prosecutors and other governmental entities. Justice Jackson wrote in 1953:

> Courts uniformly disapprove compromise verdicts, but are without other means than admonitions to ascertain or control the practice. ...
>
> In civil cases, certainty and exposure of the process is sometimes sought by the special verdict or by submission of interrogatories. *E.g.,* Fed.Rules Civ.Proc., 49. But no general practice of these techniques has developed in American criminal procedure. Our own Rules of Criminal Procedure make no provision for anything but a general verdict. Indeed, departure from this has sometimes been resisted as an impairment of the right to trial by jury, see *People v. Tessmer*, 171 Mich. 522, 137 N.W. 214; *State v. Boggs*, 87 W.Va. 738, 106 S.E. 47, which usually implies one simple general verdict that convicts or frees the accused.
>
> Nor have the courts favored any public or private post-trial inquisition of jurors as to how they reasoned, lest it operate to intimidate, beset and harass them. This Court will not accept their own disclosure of forbidden quotient verdicts in damage cases.

> *McDonald v. Pless*, 238 U. S. 264. Nor of compromise in a criminal case whereby some jurors exchanged their convictions on one issue in return for concession by other jurors on another issue. *Hyde v. United States*, 225 U. S. 347.

Stegmeier's right to a jury trial was compromised by the District Court's instructions and verdict form. Stegmeier's conviction should therefore be reversed.

II. The District Court's use of a verdict form with special interrogatories violated the ***jury's*** right to issue a general verdict in Stegmeier's case.

Several jury instructions by the District Court invaded the province of the jury and led the jury to understand that guilty verdicts would be received more favorably than not-guilty verdicts. Stegmeier's jury was notably subjected to an ominous instruction which falsely suggested that jurors would be prosecuted or otherwise punished if they based their verdict on their senses of justice, conscience or other factors outside the commands of the District Judge.

Amicus FIJA has long argued that juror oaths have become a device for subjugating jurors to the control and domination of judges and prosecutors. The great jury scholar Lysander Spooner, in his book *Trial By Jury*, discussed the slow alterations of jury oaths over time from focusing on the jury's independence and prerogative, to focusing on judge's instructions on the law. Blacksone's Commentaries, noted Spooner, provided for the following oath in criminal trials:

> [Jurors swore that they would] "Well and truly to try, and true deliverance make, between our sovereign lord, the king, and the prisoner whom they have in charge, and a true verdict to give according to the evidence." - 4 Blackstone, 355.

Lysander Spooner, *Trial By Jury* 88 (1852).

Spooner wrote that the juror oaths used in criminal trials at his own time had slowly begun to include references to the proposition that jurors have a duty to render verdicts according to the evidence:

> The words, "according to the evidence," have doubtless been introduced into the above oaths in modern times. They are unquestionably in violation of the Common Law, and of Magna Carta, if by them be meant such evidence only as the government sees fit to allow to go to the jury. If the government can dictate the evidence, and require the jury to decide according to that evidence, it necessarily dictates the conclusion to which they must arrive. In that case the trial is really a trial by the government, and not by the jury. The jury cannot try an issue, unless they determine what evidence shall be admitted. The ancient oaths, it will be observed, say nothing about "according to the evidence." They obviously take it for granted that the jury try the whole case; and of course that they decide what evidence shall be admitted. It would be intrinsically an immoral and criminal act for a jury to declare a man guilty, or to declare that one man owed. money to another, unless all the evidence were admitted, which they thought ought to be admitted, for ascertaining the truth.

Id. At 89.

While the oaths themselves have gradually grown to deemphasize jurors' independence and to emphasize judges' instructions, the judge's instruction that

jurors will be violating their oaths if they stray from judicial control takes this evolution one step further. In Stegmeier's case, the jury was instructed to:

> Keep constantly in mind that it would be a violation of your sworn duty to base a verdict upon anything other than the evidence received in the case and the instructions of the Court.

Jury Instruction 3, Document No. 54, p. 4.

The threat suggested by this instruction is baseless. No juror can ever be punished or prosecuted for voting to acquit a defendant based on the juror's conscience, or their sense of justice. Such an intimidating proclamation serves only to undermine jury independence. And having been subjected to such intimidation, Stegmeier's jury likely would have been made to feel uncomfortable with acquitting Stegmeier for fear of the consequences of a "violation of your sworn oath."

The historic oath noted in Blackstone's Commentaries contained nothing that would forbid jurors from acquitting if they were convinced -- based solely on "the evidence" -- that the accused's actions were morally blameless and that a conviction would be unjust. In such cases, no jurors could be said to have decided a case "well and truly" if they were required to disregard their own sense of justice to convict. And a conviction reached in disregard of a juror's own sense of justice would certainly be no "true deliverance."

The U.S. Supreme Court (and virtually all the highest courts in every state) have interpreted the right to jury trial in criminal cases to forbid special verdicts which require jurors to describe or explain the reasons for their verdicts or to provide any information about their votes. This right of jurors to issue a "general verdict"—a summary one- or two-word statement (guilty or not guilty), with no record or account of what grounds the verdict was based on or the degree of the jury's agreement—flows from the right of juries to deliberate in secret.

Moreover, because no jury ever has to answer for its verdict after rendering it, jury nullification survives in the face of all governmental attempts to stamp it out. Juries have an inherent "veto power" that can be brought into use to protect a member of their community from unjust or abusive criminal prosecution. "When juries refuse to convict on the basis of what they think are unjust laws, they are performing their duty as jurors." Jack B. Weinstein, *Considering Jury "Nullification": When May and Should a Jury Reject the Law to Do Justice*, 30 Am. Crim. L. Rev. 239, 240 (1993).

CONCLUSION

For the above-stated reasons, Stegmeier's conviction should be reversed.

DATED this 29th day of February, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that on February 29, 2012, a true and correct copy of the foregoing document was served upon the following individuals by E-filing through This Court's electronic filings system:

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS AND TYPE STYLE REQUIREMENTS

1. This brief complies with the type-volume limitation of Fed.R.App.P. 32(a) because this brief contains 2,217 words, excluding the parts of the brief exempted by Fed.R.App.P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed.R.App.P. 32(a)(5), and the type style requirements of Fed.R.App.P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14 point Times New Roman Script.

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