

Jurors Do The Math

“The judge writes everything down by hand,” Juror 1 observed as she looked out the courthouse window of the third-floor jury room. She was a middle-aged woman with a matronly figure.

“We don’t get to take notes. What’s with that?” Juror 4 responded as she sat at the table across the room.

“I think we’re supposed to use our collective memory,” Juror 2 suggested, without looking up. He was a casually dressed young man with a beard and a ‘Semper Fi’ tattoo on his right forearm. He wore black Harley Davidson boots every day of trial and jury selection.

After two days of testimony in an assault prosecution case, the six-person jury had started deliberations.

“I don’t even recall the arresting officer’s name,” responded Juror 3. “How are we supposed to remember what they said yesterday?”

“Koegel. His name is Koegel,” Juror 1 said as she walked from the window to the only empty chair at the table.

“We just found our foreperson,” announced Juror 3, who was the one who could not recall the officer’s name. She said it in such a manner that they all knew she was speaking hopefully on behalf of the jury.

The other jurors started to laugh, except for Juror 1, who was the only nominee in the group.

“All in favor, say aye,” said Juror 2, who was glad he escaped nomination.

“Aye,” said five voices.

“OK, OK,” said Juror 1, the new foreperson. “That will teach me to answer a question,” she complained as she suppressed a smile.

The jurors pulled up their chairs as Juror 5 walked around the room with the coffee carafe, filling cups. It had not been a difficult trial with just eight witnesses called to testify. The jurors had no experience, so they had no frame of reference to know a run-of-the-mill trial from a complex murder prosecution. They just knew it was two days out of their lives, and the two dozen other members of the jury panel who were not selected were the lucky ones.

“Who wants to start the conversation?” said the new foreperson as she looked around the room, exercising her new authority.

“The cops would not have arrested the defendant if he wasn’t guilty, would they?” offered Juror 3 as she set down the coffee cup. “I mean, they have to have proof and all that,” she added with hesitation.

“If we are ready to vote now,” the foreperson responded, “I’ll make some ballots.”

The six people, four women and two men, sat and considered the benefits of voting without deliberation, as they watched the foreperson tear notebook paper into ballots.

Finally, Juror 5 stated that he was unsure whether he was ready to vote. “The defense attorney made the point that this was a drug buy that went wrong,” he offered.

Nobody said anything for a couple of minutes while the foreperson passed blank ballots around the table.

“But the woman got knocked down, and they took her to the hospital,” said the Semper Fi man. “I mean, this was not like a shoving match on the playground. I also don’t like men who abuse women,” he added. Several jurors nodded their heads and stared at the paper ballots before them.

“I know the defense attorney said it was a drug deal, but what evidence was there to support his argument?” asked the foreperson. “The judge said we need to consider the testimony, not the lawyer’s arguments.”

The defendant was charged with the crime of assault, alleged to have happened late at night in an alley behind a local bar. The victim was a woman patron who said a man assaulted her as she walked out the back door of the bar to her car. The bartender heard the commotion and called 911. When Officer Koegel and his partner arrived, they saw two people yelling at each other, and the man was holding the woman by one arm. As the woman saw the headlights of the patrol car in the alley, she used the strap to swing her purse at the man and dropped to the ground as the man let go of her arm.

The officers got out of the car, separated the two people, and the woman announced she was the victim of an assault. She was crying, had no visible injuries, but she complained about pain in her neck and back. An ambulance took her to the hospital.

The man admitted he grabbed her, denied he hit her, and said she was a drug dealer he had just met that night in the bar. He said the deal had gone bad when she took his money. The police arrested the man and took him to the station for questioning and processing.

“We know she was not injured based on the ER records from the hospital,” said Juror 5, the man who poured the coffee. “The police all but admitted it looked like she dropped to the ground when she recognized the patrol car coming down the alley. There is more to the story than what the prosecutor is saying,” he suggested.

“But they arrested him,” protested Juror 3, who earlier could not recall the officer’s name. “I know that does not mean he is guilty,” she admitted. “And they never found any drugs.”

The defendant told the police he paid the woman \$400 in cash for pills he called Ecstasy, which she never delivered. After he paid her, she told him the pills were in her car, but

before the payment, she implied the pills were in her purse. The dispute started when she put the cash in her purse, got up from the booth where they were sitting, and started walking to the back door. He told her to give him back the cash while she took her purse to the car to get the pills. She ignored him, and he followed her out the back door. Once outside, he grabbed her arm, and she started screaming.

“The absence of drugs does not mean this was not a drug transaction,” said Juror 6, who until now had remained silent.

“Why do you say that?” replied Juror 2. “He says it was a drug buy, but there is no evidence to support his claim.”

“I know, but what other explanation is there for the behavior of these two people who don’t know each other?” Juror 6 asked. “This is not a lover’s quarrel, and there is no evidence of attempted rape; it’s about money. I’ve been a single woman in a bar, and I would never step out the back door at night into an alley, alone.”

The jurors sat quietly, considered what Juror 6 had to offer about the evidence, and sipped their coffee. Juror 5 went around the room with the carafe and filled cups, again.

“Are you a barista in real life?” the foreperson asked Juror 5 when the young man came to her cup.

“How did you guess?” he answered, as the other jurors laughed. “I’m a barista at a bookstore. Coffee is my thing.”

“Keep up the good work,” someone said as the barista juror finished pouring coffee. They sat quietly, thinking about the suggestion from Juror 6 that this incident was about money.

“And I’ve been a bartender,” admitted Juror 4. “It was many years ago, but I know a few things about young people and drinking,” she said. “I thought it was significant that the bartender testified the woman was drinking straight Pepsi. Or was it Diet Pepsi? Either way, that is something a bartender would remember.”

Juror 2, Semper Fi, said, “Yeah, I wondered why the defense attorney even asked. He asked the bartender what the victim had been drinking before the assault; I mean, the alleged assault.” Then he turned to Juror 4, the former bartender, and asked, “What does the fact that she was drinking Pepsi suggest to you?”

“Either she has a drinking problem, or she has a reason to stay sober at a time and place where people pay money not to stay sober,” the former bartender answered.

After more head-nodding around the table, Juror 6 asks, “Why did the defendant testify that he had a ten-dollar bill in his wallet when he entered the bar?”

The defendant testified that he had \$10 in cash when he arrived at the bar and bought a couple of beers before meeting the woman sitting a few stools down from him. After negotiating with the woman to buy the pills, he went to the ATM in the bar to get cash, using his debit card. The woman told him she was going to move to a booth in the back because she knew there was a security camera that covered the area where they were sitting. She thought there were no cameras pointed at the booth by the back door. He got \$400 from the machine and walked to the booth to give her the cash and get the pills.

“Who cares how much money he had when he walked into the bar?” Semper Fi asked. “Isn’t this case about what happened in the alley, not about how much money the defendant had?”

“I get it,” responded Juror 3, who could not remember the officer’s name. “I may not recall names, but I can do the math. I was a bank teller, and the numbers add up,” she exclaimed. Juror 3 was a senior citizen with gray thinning hair and bifocals. She was dressed in business casual today, as she had every day of the trial and jury selection.

“What math?” asked the foreperson.

“Remember the defense attorney asked officer what’s-his-name . . .”

“Koegel,” the foreperson advised for the second time.

“Yes, Officer Koegel. The attorney asked him about receipts the defendant had in his pocket,” she continued.

Most of the jurors were nodding their heads, indicating they remembered.

“He had a receipt for a purchase at the bar that he made with cash before he went to the ATM, right?” said the former bank teller. Without waiting for answers, she asked the foreperson to hand her the exhibits the judge had admitted into evidence at trial. The foreperson kept the jury instructions and gave the exhibits to the former bank teller.

The other jurors watched as the bank teller juror flipped through the papers and photos that constituted the non-testimonial evidence. They included police reports, photos of the victim's face and arms, which showed no markings or bruises, and photos of the defendant’s hands, which also showed no signs of injury or aggression. Finally, she found photocopies of the receipts.

“He spent \$9.66 at the bar, in cash,” she read.

Juror 4, the former bartender, asked to look at the exhibit. She perused the receipt and reported, “The payment was received at 10:22 pm.”

“What time did he use the ATM?” asked Juror 6.

Now, all the jurors were paying attention as the exhibits began to speak to them.

The former bank teller, who had the exhibits on the table before her, started turning pages until she found the photocopy of the ATM receipt the defendant had in his pants pocket. "10:51 pm," she said, reading from the exhibit.

"What time were the police called?" asked the foreperson.

"11:12 pm," reported the bank teller after reading information from the police reports.

The six jurors all sat, looking at the table and the stack of exhibits, sipping their coffee. The barista juror got up, and they all knew where he was going, so they sat back to let him pour the coffee.

"The defense lawyer talked about reasonable doubt in the closing argument," Semper Fi said to the others. "He said something about 34 cents. Anybody recall that?"

"Once again, I don't recall his argument," the bank teller said, but I recall the numbers. And, no, at the time, it did not make sense."

"So, at 10:22, he pays for the beer; at 10:51, he uses the ATM, and at 11:12 somebody calls 911 to report the assault. What has 34 cents got to do with anything?" the foreperson asked, looking around the room.

The bank teller juror started reading and slowly turned the pages of the exhibits. "Anybody else want to look at these?" she asked after about the first ten pages.

Nobody volunteered as they watched her lean her head against the palm of her hand and read the documents. "Here it is," she said after a few minutes.

"What is it?" Barista juror asked as he started to make a new carafe of coffee.

"The jail inventory," Bank Teller juror reported.

A few people groaned and returned to watching the Barista make coffee.

"This is why the defense asked the judge to admit the jail inventory into evidence," the Bank Teller juror said. "It seemed pointless at the time, but now I understand," she said as she pointed to an item on the list of things the defendant had on him when he was booked into the County jail.

"Well, he didn't have drugs, so what is so important?" inquired Semper Fi.

"He had 34 cents in change," the Bank Teller advised as she looked around the room.

The jurors looked at the former bank teller and then glanced around the room at one another.

“Do the math,” the Bank Teller said. “He walks in with \$10, gets \$400 more from the ATM, and by the time the cops arrive, he only has 34 cents. We know how \$9.66 of the \$410 was spent because we have a receipt from the bar. The \$400 is missing!”

“Money,” Semper Fi said, “he paid the alleged victim for pills.”

“It must have been in her purse,” suggested the foreperson.

“The cops didn’t check her purse because she took it with her in the ambulance, and we will never know,” Juror 6 concluded.

The six jurors nodded their heads and thought about what the missing money means to the decision they have to make.

“Does he get a pass on assault, just because his illegal drug deal didn’t go as planned?” the foreperson asked as she looked around the room.

“Maybe it wasn’t an assault,” suggested the Barista juror. “I would confront a customer who stiffed me on a cappuccino. I wouldn’t let them just walk away.”

“You mean it was a theft?” asked Semper Fi.

“Can you have theft in an illegal drug sale?” asked the Bank Teller.

“I’m not sure that is the right question,” said the former bartender, as the other jurors looked at her. “The question is this: who is the victim? The man who lost \$400, or the woman who had no injuries, took the money and a free ride to the hospital.”

“If I recall correctly, the judge says we have to convict if we are convinced beyond a reasonable doubt,” said the former bartender. Nobody responded.

The foreperson turned to one of the pages of the jury instructions and began to read it to herself. Then she started to read aloud, ‘A reasonable doubt is a doubt for which a reason exists.’ She put the instructions down on the table. “I have a reasonable doubt,” she advised, still looking at the printed jury instructions.

“Can we ask the judge to order the woman to give the defendant back his money,” Semper Fi asked with a grin, as the other jurors joined him in a laugh.

“Time to vote,” said the foreperson. “All who vote to convict, raise your hand.” She looked around the room and saw no hands raised.