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We Would “Never Come To An Agreement” if Asked To Return In Fahie Case, Juror Tells Defense Attorney in Highly Irregular Phone Call

Court considers next steps amidst juror concerns over unanimity

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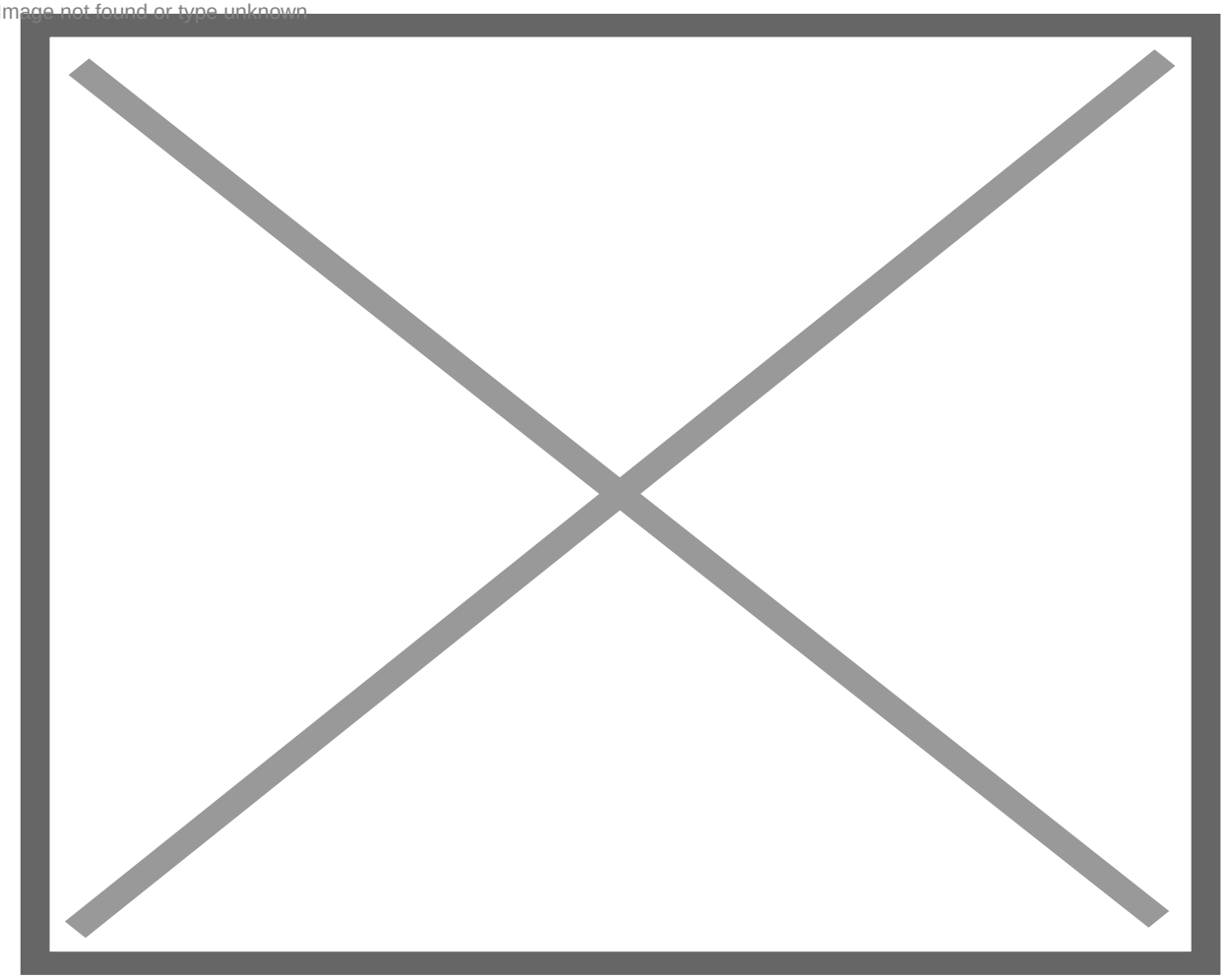

Former BVI Premier Andrew Fahie

The U.S. District Court in the Southern District of Florida must now figure out what to do about the apparent second-guessing of their votes to convict Andrew Fahie by at least two jurors in the case.

Earlier this week, reports emerged that shortly after delivering their verdict, being polled and discharged, two jurors made their discomfort with the outcome of the trial known, first to court staffers, and then directly to counsel for the defense.

Now, new filings by both sides of the matter have shed more light on exactly what happened, while make competing suggestions about how the court should proceed.

In response to a brief from prosecutors, the defense noted that one of the jurors in question (Juror A) had, on day six of the eight-day trial, sent a note to the court complaining about the length of the proceedings and requesting a “speedy trial”. At the time, the court admonished them about discussing such matters before the case being presented to them for deliberation.

While the jury was being polled after delivering their verdict on February 8, another juror (Juror B) reportedly made eye contact with counsel for the defense and “facially indicated concern,” something counsel raised immediately following the jury’s discharge by the court. At that time, no further action was taken, but minutes later, Judge Williams summoned the parties back into the courtroom to advise that two jurors (B and C) had made contact with a court staffer to indicate that the published verdicts did not represent their decision.

However, because the staff member had immediately terminated the inappropriate contact, there was no indication of which of the charges had not received unanimous agreement. Jurors B and C were informed that they would be contacted again in reference to an investigation and inquiry, and discharged again.

However, minutes later, Juror C made another attempt at outreach, this time by calling the offices of Venable LLP, the firm representing Mr. Fahie. A second attempt was made a day later, with Juror C leaving a voicemail this time, which counsel reportedly did not listen to. Mistaking the number for that of a friend of Mr. Fahie, the call was returned. During a brief conversation, Juror C reportedly asked what was happening with the case, and expressed concern that if all jurors are asked to return that they would “never come to an agreement”. The call was swiftly terminated by the attorney and immediately reported to the court as well as prosecutors.

At a hearing on Monday, the court invited both prosecutors and the defense to suggest how to proceed under these highly unusual circumstances. In a brief filed the same day, prosecutors cited Federal Rule of Evidence 606 (b) and Eleventh Circuit precedent to argue that the only avenue available to Judge Kathleen Williams is to inquire of the jury foreman as to whether there were any mistakes made on the verdict form. “Should the foreperson respond that the verdict form does not contain any mistakes, the Court should end its inquiry and the jury’s verdict must remain respected and undisturbed.” Crucially, prosecutors argued, there should be no inquiry into how the jury arrived at the verdict, or whether some jurors were displeased with the outcome. The court should also not make direct inquiries of other jurors, because everybody had already been polled under oath. “A juror’s subsequent recantation, dissatisfaction, or anger with the deliberation process or the outcome cannot be the basis for impeaching a verdict,” government lawyers argued.

In contrast, the defense suggested that Jurors B and C should be questioned directly by the court about their responses to the jury poll. Rule 606 (b) would not be violated if the inquiry is limited solely to what answers were given, “without intruding into why the Jurors provided such answers and without intruding into jury deliberations,” argued Mr. Fahie’s attorneys. This limited inquiry would satisfy the question of whether there was indeed unanimity in the verdicts, or whether an avenue was open to declare a mistrial.

However, prosecutors argued that there are only four exceptions to rule 606 (b); if extraneous prejudicial information was improperly brought to the jury’s attention, if an outside influence was improperly brought to bear on any juror, if a mistake was made in entering the verdict on the form, or if a juror clearly states that they relied on racial stereotypes or animus in voting to

convict. None of these apply in this case, government lawyers argued, and so the court is barred from questioning jurors directly about their votes.

“None of the…exceptions are tied in any way to the minimum or maximum sentence that a convicted defendant possibly faces,” prosecutors argue.

The parties have until the end of Thursday to submit any additional briefings before Judge Williams makes a decision on how to proceed. Meanwhile, Mr. Fahie remains in custody, for now still convicted of all counts against him.

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