IN THE COURT OF APPEALS OF THE STATE OF ALASKA

SAMUEL LOKOMAIKAI S. JONES, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-11360 Trial Court No. 3NA-11-13 CR MEMORANDUM OPINION No. 6551 — December 6, 2017

Appeal from the Superior Court, Third Judicial District, Naknek, John W. Wolfe, Judge.

Appearances: Josie Garton, Assistant Public Defender, and Quinlan Steiner, Public Defender, Anchorage, for the Appellant. Eric A. Ringsmuth, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Michael C. Geraghty, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Suddock, Superior Court Judge.[*]

Judge MANNHEIMER.

Samuel Lokomaikai S. Jones was tried in Naknek on three counts of second-degree sexual abuse of a minor for engaging in sexual intercourse with a 15-year-old girl, B.C. The jury acquitted Jones of two of the charges, but he was convicted of the

[*] Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska Constitution and Administrative Rule 24(d).

third charge. The superior court sentenced Jones to 6 years' imprisonment with 3 years suspended (3 years to serve), with probation for 10 years following his release from prison.

On appeal, Jones argues that he was denied his right to an impartial jury. Specifically, Jones argues that there was such pervasive partiality among the pool of prospective jurors that the trial judge either should have been more liberal in granting Jones's challenges for cause during jury selection, or should have granted Jones's request for additional peremptory challenges, or both. For the reasons explained here, we conclude that the jury selection process was fair without these extra measures, and we therefore affirm Jones's conviction.

Additionally, Jones argues that some of the probation conditions imposed on him by the superior court are unconstitutionally vague, or are not reasonably related to Jones's rehabilitation or the protection of the public. We agree with Jones that, given the record in this case, and given the superior court's findings, the challenged probation conditions are improper. We therefore vacate them.

Underlying facts relating to Jones's offense

In the summer of 2010, Jones began a romantic and sexual relationship with 15-year-old B.C. Jones was 22 years old at the time.

The State charged Jones with engaging in sexual intercourse with B.C. on three occasions: in late August 2010, in early December 2010, and on January 17, 2011. This third count was date-specific because the evidence showed that B.C. left school early that particular day (on the pretense of being ill), and her mother later came home to find a used condom in the wastebasket in B.C.'s bedroom. DNA testing of this condom revealed DNA from both Jones and B.C.

A few days *before* this January 17th act of sexual intercourse, B.C.'s mother had confronted Jones and his parents about Jones's relationship with her daughter. At this confrontation, B.C.'s mother told Jones and his parents that Jones should be in jail. According to her testimony, B.C.'s mother told Jones, "She's 15; you're 22. Stay away from her."

Less than a week later, B.C.'s mother found the condom in her daughter's bedroom. She contacted the police and turned the condom over to them.

Later that month, the police interviewed Jones. During this interview, Jones told the police that he had fallen in love with B.C., and he admitted that he had engaged in sexual intercourse with her. When the police asked Jones if he knew how old B.C. was, Jones admitted that he knew she was only 15 years old.

At trial, Jones again conceded that he had engaged in sex with B.C., but Jones now claimed that he thought B.C. was 16 or 17 years old at the time.

With regard to the first two acts of intercourse charged in the indictment (the acts that occurred in August 2010 and December 2010), the jury apparently concluded that Jones might have been reasonably mistaken about B.C.'s age — because the jury acquitted Jones of those two charges. But the jury also apparently concluded that, by the time Jones engaged in intercourse with B.C. on January 17, 2011 (a few days after the confrontation with B.C.'s mother), Jones knew that B.C. was under-age — because the jury convicted Jones of that third charge.

Underlying facts relating to jury selection, and the trial judge's rejection of three of Jones's challenges for cause

Jones's trial was held in Naknek, where both Jones and B.C. and their families lived.

During jury selection, pursuant to the procedure specified in Alaska Criminal Rule 24(b)(1)(B), the trial judge informed the parties that the jury panel would include two alternates, and that each party would receive a total of eleven peremptory challenges to use at any time during the selection process.

Jury selection took place over the course of two days. On the first day of jury selection, 45 potential jurors were questioned. Of these 45 potential jurors, 22 were excused for cause, mostly because of their ties to the people involved and their prior knowledge of the case.

This left 23 potential jurors. Both the prosecution and the defense exercised nine of their eleven peremptory challenges. After these peremptory challenges, only seven jurors remained. (Seven jurors remained, not five, because the parties' peremptory challenges overlapped with respect to two jurors.)

On the second day of jury selection, another 32 potential jurors were questioned. Of these, 24 were excused for cause — again, primarily because of their ties to the people involved and their prior knowledge of the case. Thus, of these additional 32 prospective jurors in the second group, only 8 remained.

Jurors R.A., R.W., and R.C. were three of these eight prospective jurors who remained from the second group. As we will explain, Jones's attorneys challenged all three of these prospective jurors for cause. We are about to describe Jones's challenges to Jurors R.A. and R.W. We will then interrupt our discussion of Jones's juror challenges to explain how the trial judge structured the final stage of jury selection. Then we will describe Jones's challenge to Juror R.C.

The defense challenge to Juror R.A.

During *voir dire*, Juror R.A. conceded that her initial reaction to Jones's case was, "He's too old for her, and she was too young."

R.A. also explained that she had family connections to two of the people who were expected to testify at Jones's trial. (At that time, R.A.'s brother-in-law and her sister-in-law were both expected to testify at Jones's trial. But as it happened, neither R.A.'s brother-in-law nor her sister-in-law testified at trial.)

In addition, R.A. told the court that her mother-in-law was good friends with B.C.'s parents, and that her husband was good friends with B.C.'s father.

But when R.A. was asked whether these family and social relationships would affect her decision, R.A. answered that she thought she could put these relationships aside. She agreed that she would have to evaluate each person's testimony based on "[how] it went on the stand", as if these witnesses were "anybody who walked [in] off the streets", and not based on her pre-existing feelings or impressions.

At the conclusion of Juror R.A.'s *voir dire* examination, Jones's attorney challenged R.A. for cause. The defense attorney argued that R.A. was not being truthful when she declared that she could treat her sister-in-law's testimony just like any other witness's. The attorney told the judge, "I don't think that [R.A.] has been open and up-front with the Court."

The trial judge disagreed. Based on R.A.'s answers, the judge concluded that R.A. understood her duty as a juror, and that R.A. had been honest when she declared that she was capable of fulfilling that duty.

The defense challenge to Juror R.W.

During *voir dire*, Juror R.W. expressed a strong belief that people should abstain from sexual intercourse until they were married.

This issue arose when Jones's attorney asked R.W. a series of questions designed to elicit her opinion as to how old people should be before they started dating. R.W. replied that her personal feelings on this matter were not particularly relevant — that the important question was, "What's the law?"

Despite R.W.'s answer, Jones's attorney continued to press R.W. to disclose her feelings about how old a person should be before they started dating. R.W. replied that she had no particular opinion on that issue — but then she added that, "in terms of sex before marriage, I don't think that's ever okay." R.W. explained that her father was a "motivational speaker" who tried to convince young people "why they might want to wait and have sex only in marriage." And R.W. acknowledged that she, too, had strong convictions about sexual abstinence before marriage. She then told Jones's attorney:

> *Juror R.W.*: I'll never put my convictions aside. But [as to] whether ... I'll follow the law, yes, I could look at the law specifically, and this case specifically, and follow what the law says.

Based on R.W.'s answers, and particularly R.W.'s personal conviction that people should be sexually abstinent before marriage, Jones's attorney challenged R.W. for cause. The trial judge rejected this challenge; he found that R.W. had been "pretty clear" that she would follow the law regardless of her personal beliefs.

The continuation of jury selection, and the judge's structuring of this final phase

After all of the second day's prospective jurors had been questioned, and after the trial judge had ruled on all of the challenges for cause, the judge informed the parties that it was time for each of them to exercise their remaining two peremptory challenges. The judge and the lawyers then discussed the risk that, after these peremptory challenges were exercised, fewer than twelve jurors would be left.

As we have explained, the first day's group of prospective jurors yielded only seven jurors. And of the second day's group of prospective jurors, only eight remained after the disqualifications for cause. Thus, only 15 eligible jurors remained. If both the State and the defense now exercised their two remaining peremptory challenges, and if there was no overlap in the parties' challenges, then only four of the second day's group of jurors would remain — for a total of only eleven jurors.

Because of this risk, the trial judge had directed the clerk to round up a final group of prospective jurors — eight people "[who] didn't show up the first two times, and [the clerk] called and said, 'Get in here.'" But the judge also told the attorneys that he did not intend to summon these eight people to court unless there was a need for them — that is, only if the parties exercised their peremptory challenges in a way that left fewer than twelve jurors.

At this point, Jones's attorney suggested that the judge summon these additional eight prospective jurors, so that those additional people could be questioned before the parties exercised their remaining peremptory challenges.

In his brief to this Court, Jones portrays his attorney's request as an attempt to make sure that the defense would have the opportunity to exercise their peremptory

challenges against this new, unknown group of eight prospective jurors. But that is not how the defense attorney explained her request to the trial judge.

Rather, the defense attorney told the judge that the new group of eight prospective jurors should be questioned in order to make sure that they would not be disqualified *for cause*. The defense attorney explained that she wanted to make sure that, if she and the prosecutor exercised their peremptory challenges against the jurors who were already present in court, and if this resulted in a jury of fewer than twelve, there would still be one or more qualified jurors available to fill out a twelve-person jury:

> *Defense Attorney*: I think we need a pool [that is big] enough that we can exercise our pre-empts without having to potentially not get a jury. I mean, that's my concern. ... I don't want to ... exercise both [of my] pre-empts, and then the eight [new prospective jurors] coming in [all] get excused for cause. ... I think I need to know, before I exercise my pre-empts, and really ... make a decision about ... where do we want to go as far as biases and those things, I need to know whether there [are] other potential jurors [available] or not. *And it's just the [challenge for] cause issue that gives me pause.*
>
> And so, what I would prefer to do is to find out if, in fact, there's going to be other individuals to work from. So at least, if we could just deal with individual voir dire on those folks, *and find out if anyone is going to be gone for cause.*
>
> . . .
>
> So I guess, at the end of the day, it just seems to me to make the most sense that we would bring in those [additional] folks *and see if, in fact, there's any that are going to be excused for cause; and if they're not, then Mr. Jones can exercise his pre-empts, knowing whether there's going to be*

some additional jurors, or whether, in exercising these pre-empts, it's going to possibly force a mistrial.

(Emphasis added.)

As can be seen from this portion of the transcript, the defense attorney told the judge that she was worried that she might be risking a mistrial if (1) both she and the prosecutor used all of their remaining peremptory challenges against the *current* group of eight prospective jurors (thus reducing the total number of qualified jurors to eleven), and if (2) none of the next group of eight (the yet-to-be-summoned group of prospective jurors) survived the process of challenges for cause. The defense attorney did not want to make her decisions about whether to exercise her remaining challenges against the *current* group of eight until she was certain that at least some of the unsummoned additional group of jurors would be able to serve.

In reply, the trial judge told the defense attorney that he preferred not to summon these remaining eight people to court if he didn't have to, and that he was "hoping [to] get a jury" out of the prospective jurors who were currently undergoing the selection process. The judge told the attorneys, "Exercise your pre-empts, [and] then I'll talk to you about whether you want to call in the remaining [group of eight]".

At this point, one of Jones's defense attorneys asked if the judge intended to give each of the parties one additional peremptory challenge if (1) the parties exercised all of their remaining challenges against the current group of eight, and (2) this resulted in a jury of fewer than twelve, so that the court would have to summon the additional group of eight prospective jurors. The judge answered no — that the parties had been given eleven peremptory challenges each, and the judge believed that this was sufficient.

The defense challenge to Juror R.C.

After the judge explained how the final phase of jury selection would be conducted, the defense offered a challenge for cause against prospective Juror R.C.

During *voir dire*, Jones's attorney asked R.C. whether he was personally offended or put off by the fact that Jones was 22 years old and Jones's sexual partner was only 15 years old. R.C. replied that he did not view such a relationship as offensive or distasteful.

The defense attorney then asked R.C. if he would be willing to vote "not guilty" if the evidence showed that Jones reasonably believed that B.C. was 16 years old. R.C. replied that he did not know whether the law allowed this type of defense — but if the law did allow it, then he would apply it to Jones's case. R.C. explained, "I have a military background, and ... the law is the law; rules are rules. ... But if there's mitigating circumstances cited in the law, then we have to hear that."

R.C. also expressed displeasure over the fact that Jones's trial was being held in Naknek. He declared that the trial was imposing a significant expense on the people of Naknek, and that it was causing "emotional turmoil" and leaving "emotional scars" within the community.

At one point, the defense attorney asked R.C. if he saw the world in terms of black and white, or if he saw the world in "shades of gray". The defense attorney's reference to "black and white" apparently prompted R.C. to think along racial lines:

> *Juror R.C.*: I just thank God we're not talking about a 22-year-old black man and 15-year-old white girl, because that would really complicate it.
>
> *Defense Attorney*: Well, why so?

R.C.: Because I think that, in a predominantly white community, that it would be even more unacceptable than somewhere else.

Defense Attorney: Uh-huh. ... Do you have any hesitations in this case [because] there was a white person and a non-white person involved in this scenario? [Jones is of Hawai'ian descent.]

R.C.: No.

Defense Attorney: Okay. Okay.

R.C.: You're talking about a man and a girl, though, right?

Defense Attorney: Uh-huh.

R.C.: Okay. Not two boys.

Defense Attorney: No. No, not two boys. We won't ... open that whole other can of worms, I guess.

R.C.: Okay.

Defense Attorney: Okay.

When the defense attorney later challenged R.C. for cause, she argued that R.C. had "raised race as an issue", and she told the judge that she had "concerns" as to whether R.C. could sit fairly in Jones's case, because Jones was a native Hawai'ian.

The trial judge denied this challenge for cause. The judge found that R.C. had not expressed his own personal racial bias, but rather had remarked on the presence of racial bias in the community.

The resumption of jury selection

Following the trial judge's ruling on the defense challenge for cause against R.C., the parties exercised their peremptory challenges against the group of eight prospective jurors who had just been questioned. The prosecutor used both of her remaining peremptory challenges, but Jones's attorneys used only one of their challenges. The defense attorneys chose to leave R.C. on the jury.

Because the parties had exercised only three peremptory challenges against this group of eight prospective jurors, five of this group remained. Adding these five jurors to the seven who had already been selected, the parties now had a jury of twelve — but with no alternates.

The trial judge told the attorneys that he preferred to have at least one alternate juror, because Jones's trial was scheduled to span a holiday weekend (the President's Day weekend). The judge then informed the parties that he was going to direct the clerk to summon the last remaining eight prospective jurors to court.

Jones's attorneys urged the judge not to do this — *i.e.*, not to delay the trial any further to conduct additional jury selection. One of the defense attorneys told the judge that she preferred to simply "impanel this jury [of twelve] and get moving." Indeed, a few minutes later, the trial judge declared that he thought it was unlikely that the final group of eight would yield any acceptable alternate jurors — and that it would probably be better to "get started with [the presentation of] some evidence" rather than holding any more jury selection proceedings.

But the judge then reconsidered: noting that Jones's trial was scheduled to span a holiday weekend, the judge decided to see whether one or two alternate jurors could be obtained from the final group of eight.

Having made the decision to continue jury selection in an effort to obtain one or two alternate jurors, the judge then gave each side one additional peremptory challenge. *See* Alaska Criminal Rule 24(b)(1)(B). This left the prosecutor with one peremptory challenge, and Jones's attorneys with two (because the defense had only used ten of their original eleven challenges).

Of this final group of eight prospective jurors, four were excused for cause, and three were peremptorily challenged — yielding one alternate juror to add to the already selected panel of twelve.

The result of Jones's trial

As we have already explained, Jones's defense at trial was that he honestly and reasonably thought that B.C. was 16 years old when he engaged in sexual intercourse with her. Based on this defense, the jury acquitted Jones of the first two counts of sexual abuse of a minor charged in the indictment (the acts of sexual intercourse that occurred in August 2010 and December 2010). However, the jury convicted Jones of the third count of sexual abuse of a minor — the one based on the act of intercourse that occurred on January 17, 2011. This was the act of intercourse that occurred shortly after B.C.'s mother confronted Jones and his parents about the inappropriateness of Jones's relationship with her teenage daughter.

Jones's post-trial motion for a new trial

Two weeks after the jury returned its verdicts, Jones's attorneys filed a motion asking for a new trial.

In this motion, Jones's attorneys declared that their client had been denied a fair trial because the defense attorneys had been forced to alter their jury selection

tactics after the trial judge decided to summon the third and final group of eight prospective jurors (the group that eventually yielded the alternate juror).

According to the defense attorneys, this alteration of tactics occurred when the judge and the parties were discussing the potential availability of the final group of eight prospective jurors, and whether that additional group of eight should be summoned to court.

As we explained earlier in this opinion, each side had two peremptory challenges remaining at that point in the jury selection process. Jones's attorney asked the trial judge to delay having the parties exercise their remaining peremptory challenges until the court conducted at least a partial *voir dire* of the final group of eight prospective jurors, to see how many of them would be disqualified for cause. Jones's attorney explained that she was worried that she might be risking a mistrial if both she and the prosecutor used all of their remaining peremptory challenges (a total of four challenges) against the *current* group of eight prospective jurors, only to find out later that none of the yet-to-be-summoned final group of eight prospective jurors would survive a challenge for cause — thus leaving the court with fewer than twelve jurors available to serve on Jones's jury.

The trial judge declined to summon the final group of eight prospective jurors for this partial questioning, and the parties then proceeded to exercise peremptory challenges against the eight prospective jurors who were currently present in court. As we have explained, the prosecutor used both of his remaining peremptory challenges, but the defense used only one of theirs.

In their motion for a new trial, Jones's attorneys asserted that they had consciously refrained from using their last remaining peremptory challenge — but for a reason different from the one they expressed to the trial judge at the time.

Jones's attorneys did not assert that they refrained from using their last peremptory challenge because they did not wish to risk a mistrial — *i.e.*, did not wish to risk the possibility that the exercise of four peremptory challenges would leave fewer than twelve qualified jurors. Instead, Jones's attorneys asserted that they refrained from using their last peremptory challenge because they could not afford to "face the new, unknown [group of eight prospective jurors] without a single peremptory challenge".

Jones's attorneys further declared that, had they exercised their last peremptory challenge rather than keeping it in reserve, they would have used it to challenge Juror R.C.

The defense attorneys then asserted that their failure to peremptorily challenge Juror R.C. was "a crucial, deciding factor" in Jones's trial because new evidence had come to light of R.C.'s "significant, undisclosed bias". This new evidence consisted of two letters from other jurors, describing the content of the jury's deliberations.

According to these jurors' letters, R.C. declared during deliberations that Jones was a "pervert", a "gambler", and a "predator", and that Jones was likely to "do it again". And one of the letters stated that, after the jurors had notified the bailiff that they had reached a decision, and while they were waiting to be summoned back to court to deliver their verdicts, R.C. "carefreely" told the other jurors "that his son had to spend time in jail for the same issue".

Jones's attorneys did not assert that R.C. had violated his oath to tell the truth during jury selection. (That is, the defense attorneys did not assert that R.C. had knowingly given false answers to the questions he was asked, or that R.C. had purposely withheld information that was reasonably called for by the *voir dire* questions.) However, the defense attorneys argued that R.C. had nevertheless "failed to disclose significant heartfelt bias against Sam Jones". The defense attorneys asserted that R.C.

had made his decision "based upon emotion [and] not the evidence before him", and that R.C. had "failed to follow the [trial judge's] instruction to withhold comments and deliberations until the close of [the] evidence".

Jones's attorneys recognized that Alaska Evidence Rule 606(b) normally bars a court from receiving evidence from jurors about the content of their deliberations when that evidence is offered to impeach the validity of the jury's verdicts. However, Jones's attorneys argued that the two jurors' letters were admissible to show that "an outside influence was improperly brought to bear" on the jury. *See* Evidence Rule 606(b)(2)(B).

The trial judge denied the defense motion for two reasons. First, the judge ruled that Evidence Rule 606(b) barred him from considering the two jurors' letters. Second (in the alternative), the judge ruled that even if the law allowed him to consider the two jurors' letters, those letters did not prove that Juror R.C. reached his decision based on anything other than the evidence presented at Jones's trial.

Jones's challenges for cause against Jurors R.A., R.W., and R.C.

On appeal, Jones argues that the trial judge should have granted the challenges for cause that his attorneys raised against Jurors R.A., R.W., and R.C.

With respect to Juror R.A., Jones argues that the judge abused his discretion when he credited R.A.'s assertions that she would put aside her initial impression that Jones was too old for B.C., and that she would critically evaluate the testimony of the witnesses at Jones's trial. With respect to Juror R.W., Jones argues that the trial judge abused his discretion when he credited R.W.'s assertions that she would put aside her belief that people should abstain from sexual intercourse outside of marriage.

When a trial judge rejects a challenge for cause based on the judge's assessment of the prospective juror's answers during *voir dire* questioning, an appellate court will reverse the trial judge's ruling only "in exceptional circumstances", and to "prevent a miscarriage of justice."[1]

Here, R.A. declared that she could set aside her initial impressions about the case and her relationships with the people involved, and that she could decide the case on the evidence. Similarly, R.W. declared that, despite the value she placed on sexual abstinence before marriage, she would follow the law.

As our supreme court explained in *Pralle v. Milwicz*, a prospective juror need not be "free of any positive opinions about the facts and outcome of the case". Instead, the question is "whether the juror is willing to set those opinions aside and act fairly."[2] Moreover, as our supreme court noted in *Sirotiak v. H.C. Price Co.*, the law does not require "unequivocal and absolute" impartiality on the part of prospective jurors. Rather, the trial judge must be convinced (1) that the prospective juror has, in good faith, promised to be fair and impartial, and to follow the court's instructions, and (2) that the juror is capable of honoring their promise to perform these duties.[3]

Here, the trial judge listened to what Jurors R.A. and R.W. said, and he had the opportunity to observe their demeanor. Having reviewed the record of R.A.'s and R.W.'s *voir dire* questioning, we can not say that the trial judge was clearly wrong when he concluded that R.A. and R.W. each possessed a state of mind that would allow them to render an impartial verdict.

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[1] *Pralle v. Milwicz*, 324 P.3d 286, 291 (Alaska 2014), quoting *Beck v. Department of Transportation & Public Facilities*, 837 P.2d 105, 111 (Alaska 1992).

[2] 324 P.3d 286, 291 (Alaska 2014), citing *Mitchell v. Knight*, 394 P.2d 892, 897 (Alaska 1964).

[3] 758 P.2d 1271, 1277 (Alaska 1988).

(We further note that when Jones's attorney challenged R.A. for cause, the defense attorney's challenge focused primarily on R.A.'s purported lack of ability to fairly evaluate her sister-in-law's testimony. But, as it happened, R.A.'s sister-in-law never testified.)

For similar reasons, we uphold the trial judge's rejection of Jones's challenge against Juror R.C. It is true, as Jones notes in his brief, that R.C. indicated that it would be harder for Jones to receive a fair trial if Jones were black. But the trial judge found, when he ruled on the defense challenge for cause, that R.C. was describing what he perceived to be a *community* bias against mixed-race relationships — not his own personal bias. This finding is not clearly erroneous.

In his brief, Jones notes that R.C. also expressed displeasure over the fact that Jones's trial was being held in Naknek. (As we explained earlier, R.C. expressed concern that the trial was imposing a significant expense on the people of Naknek, and he asserted that it was causing "emotional turmoil" and leaving "emotional scars" within the community.)

But when Jones's attorney presented her challenge for cause against Juror R.C., she did not mention R.C.'s comments about the difficulties of holding the trial in Naknek. Instead, the defense attorney relied solely on R.C.'s statements about potential racial prejudice. We will not reverse the trial judge's decision based on grounds that were never presented to the trial judge.

For all of these reasons, we conclude that the trial judge did not abuse his discretion when he rejected Jones's challenges for cause against these three jurors.

Jones alternatively argues that even if the trial judge correctly rejected these three challenges for cause, the trial judge should have given Jones's trial attorneys one or more additional *peremptory* challenges, to compensate for the judge's rejection of the three challenges for cause.

A trial judge has the authority to grant additional peremptory challenges to a party.[4] But the purpose of this authority is not to compensate a party for the judge's rejection of their challenges for cause. Rather, this authority is designed for situations where the answers given by one or more prospective jurors during the selection process raise significant doubts concerning the jurors' ability to be fair, even though these doubts are not sufficient to constitute good cause for their removal from the jury.[5]

In Jones's case, the record shows that the trial judge had ample reason for concluding that Jurors R.A. and R.W. could be fair, despite R.A.'s friendship with people involved in the litigation, and despite R.W.'s personal objection to pre-marital sex. The judge did not abuse his authority when he declined to give Jones's attorneys additional peremptory challenges with respect to these two jurors.

The situation is more complex with respect to Juror R.C. During *voir dire*, R.C. gave answers suggesting that he had substantial reservations about holding Jones's trial in Naknek, because of the effect that the trial would have on that small community. But as we have explained, Jones's attorneys did not challenge Juror R.C. on that basis. Rather, Jones's attorneys challenged R.C. because they asserted that he had expressed racist views.

We have already quoted the portion of the transcript where Juror R.C. declared that it would be harder for Jones to receive a fair trial in Naknek if Jones were black. But the trial judge found that R.C. was describing what he perceived to be a *community* bias against mixed-race relationships — not his own personal bias. Based on the record, the trial judge's finding is not clearly erroneous.

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[4] *Graybill v. State*, 672 P.2d 138, 139 n. 1 (Alaska App. 1983); *Pearce v. State*, 951 P.2d 445, 447 (Alaska App. 1998).

[5] *Pearce*, 951 P.2d at 447.

Moreover, when a trial judge assesses whether to give one side (or both sides) additional peremptory challenges, the judge is entitled to consider whether granting the additional challenges would disrupt or delay the trial.[6] Here, the court had all but exhausted the pool of potential jurors, and the court was on the verge of losing so many prospective jurors that it would be impossible to impanel a jury of twelve.

For these reasons, we conclude that the trial judge did not abuse his discretion when he declined to give Jones's attorneys additional peremptory challenges.

Jones's motion for a new trial

As we have explained, Jones's attorneys filed a post-trial motion for a new trial based on the content of letters written by two of the jurors after Jones's trial was over. In their letters, the two jurors alleged that Juror R.C. had made improper statements during and after deliberations (while the jury was waiting to be summoned to the courtroom to deliver their verdicts).

Alaska Evidence Rule 606(b) barred the trial judge from receiving any evidence from the two jurors (or any of the other jurors) regarding these matters. We discussed this issue at some length in *Larson v. State*, 79 P.3d 650, 653-59 (Alaska App. 2003). In *Larson*, we held that, under Evidence Rule 606(b), a verdict generally can not be impeached by evidence that jurors made improper remarks during or following deliberations — although the rule makes exceptions for "extraneous prejudicial information" improperly brought to the jury's attention, or "outside influence ... brought to bear upon any juror".

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[6] *Pearce*, 951 P.2d at 447.

In Jones's case, the superior court concluded that the alleged jury misconduct did not fall within either of these exceptions, and that Evidence Rule 606(b) therefore prohibited Jones from relying on the jurors' post-trial letters. We agree.

Jones made no claim that Juror R.C. lied during jury selection. Rather, Jones's motion for a new trial was based solely on the content of the two jurors' post-trial letters. Because Evidence Rule 606(b) barred the court from receiving evidence from the jurors regarding these matters, the trial judge correctly denied Jones's motion for a new trial.

Jones's challenges to his conditions of probation

The superior court sentenced Jones to 6 years' imprisonment with 3 years suspended, and with probation for 10 years following his release from prison.

One of Jones's conditions of probation (General Condition No. 6) declares that Jones shall "at no time have under [his] control a concealed weapon, a firearm, or a switchblade or gravity knife." Under our supreme court's decision in *Roman v. State*, a condition of probation must be "reasonably related to the rehabilitation of the offender and the protection of the public". 570 P.2d 1235, 1240 (Alaska 1977). The State concedes that this probation condition lacks the required nexus to Jones's crime or his background, and that it should be vacated. We agree.

For this same reason, we also vacate General Condition No. 12 — the condition of probation that requires Jones to submit to warrantless searches of his residence, his personal property, and any vehicle he occupies for the presence of weapons, illegal controlled substances, firearms, or any other concealable weapons.

The State argues that a portion of Condition No. 12 should be upheld — the portion authorizing warrantless searches for illegal controlled substances. It is true, as

the State notes, that there was some evidence suggesting that Jones had used alcohol and marijuana. But alcohol is not an "illegal controlled substance", and there was little evidence that Jones's use of marijuana (which was illegal at the time) was a factor in causing him to commit his crime. The sentencing judge certainly made no finding to this effect — no finding that would justify this probation condition. We therefore vacate Condition No. 12 in its entirety.

Three of Jones's special conditions of probation restrict his access to literature, films, or other entertainment or materials that have sexual themes.

Special Condition No. 12 prohibits Jones from possessing "any sexually explicit material, including pornography or sexually explicit anime." Special Condition No. 13 prohibits Jones from entering "any establishment" where "the primary business is the sale of sexually explicit material" or where "nude dancing or posing is part of the entertainment." And Special Condition No. 14 requires Jones to submit to searches of his residence, his vehicles, his computer, and any other item that is capable of connecting to the Internet "for the presence of sexually explicit material." This same probation condition requires Jones to provide his probation officer "with all passwords used on such devices."

In several recent decisions, we have struck down similar conditions of probation as being either unconstitutionally vague or overbroad. *See*, *e.g.*, *Smith v. State*, 349 P.3d 1087, 1094-95 (Alaska App. 2015); *Diorec v. State*, 295 P.3d 409, 417 (Alaska App. 2013).

Moreover, in Jones's case, the sentencing judge made no findings that would justify these types of probation conditions. For example, the judge made no finding that Jones was a sexual predator, or that he was likely to engage in other unlawful sexual activity. Indeed, the judge found just the opposite. The judge declared that Jones's case "was not a case where there was predatory [or] exploitative behavior",

and that Jones "is not someone who routinely targets young females". Instead, the sentencing judge concluded that Jones had "developed an affection [for B.C.] over a term of months", that this affection "led to [Jones's] inappropriate and illegal activity", and that Jones's conduct was "among the least serious in the definition of the offense".

We accordingly vacate Special Conditions 12, 13, and 14.

For similar reasons, we vacate Special Condition No. 19, which requires Jones to "inform all persons with whom [he has] a significant relationship or [is] closely affiliated" — as "determined by [his] probation officer" — of his "sexual offending history".

Conclusion

We AFFIRM Jones's judgement of conviction, but we VACATE the various conditions of probation discussed in the preceding section of this opinion.