



Juror Who Made Race Comments Removed From \$1.3 Billion Tax Case

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Juror Who Made Race Comments Removed From \$1.3 Billion Tax Case

By David Voreacos2023-09-20T18:02:26137-04:00

- Judge lets juror ‘standing up for White people’ stay on case
- Developer accused of arranging \$1.3 billion in fake deductions

A trial threatened to descend into chaos after 12 jurors clashed over race and class while weighing charges against a wealthy developer and two others accused of arranging \$1.3 billion in phony tax deductions.

One Black man, Juror 44, allegedly said the defendants deserved to go to jail “because they are rich, White and entitled.” A White female, Juror 26, told the judge that she’s “a White person standing up for White people.” The judge had to repeatedly intervene, telling the panel at one point not to say “f—— you” to one another.

The race-based tensions and Juror 26’s behavior prompted frantic efforts over several days to place guardrails on deliberations that are seen as sacrosanct for their secrecy, records show. The woman made the comments Monday to a federal judge in Atlanta who questioned her about fellow jurors complaining that she refused to deliberate.

By Wednesday, US District Judge Timothy Battenhad dismissed Juror 26 after multiple interviews with jurors and meetings with lawyers, according to court filings. The deliberations will start over with an alternate taking her place.

Race played no obvious role in the trial, where prosecutors accused the developer, Jack Fisher, and two others of selling fraudulent tax shelters through complex deals known as syndicated conservation easements. They’re intended to preserve green space, but prosecutors allege Fisher used them to defraud the US and enrich himself. At least 28,000 taxpayers who claimed \$21 billion in deductions in those types of deals have been audited.

Batten sought to resolve the matter Tuesday when he denied a US request to remove Jurors 26 or 44. He ruled he could only do so during deliberations if he concluded that “no substantial possibility

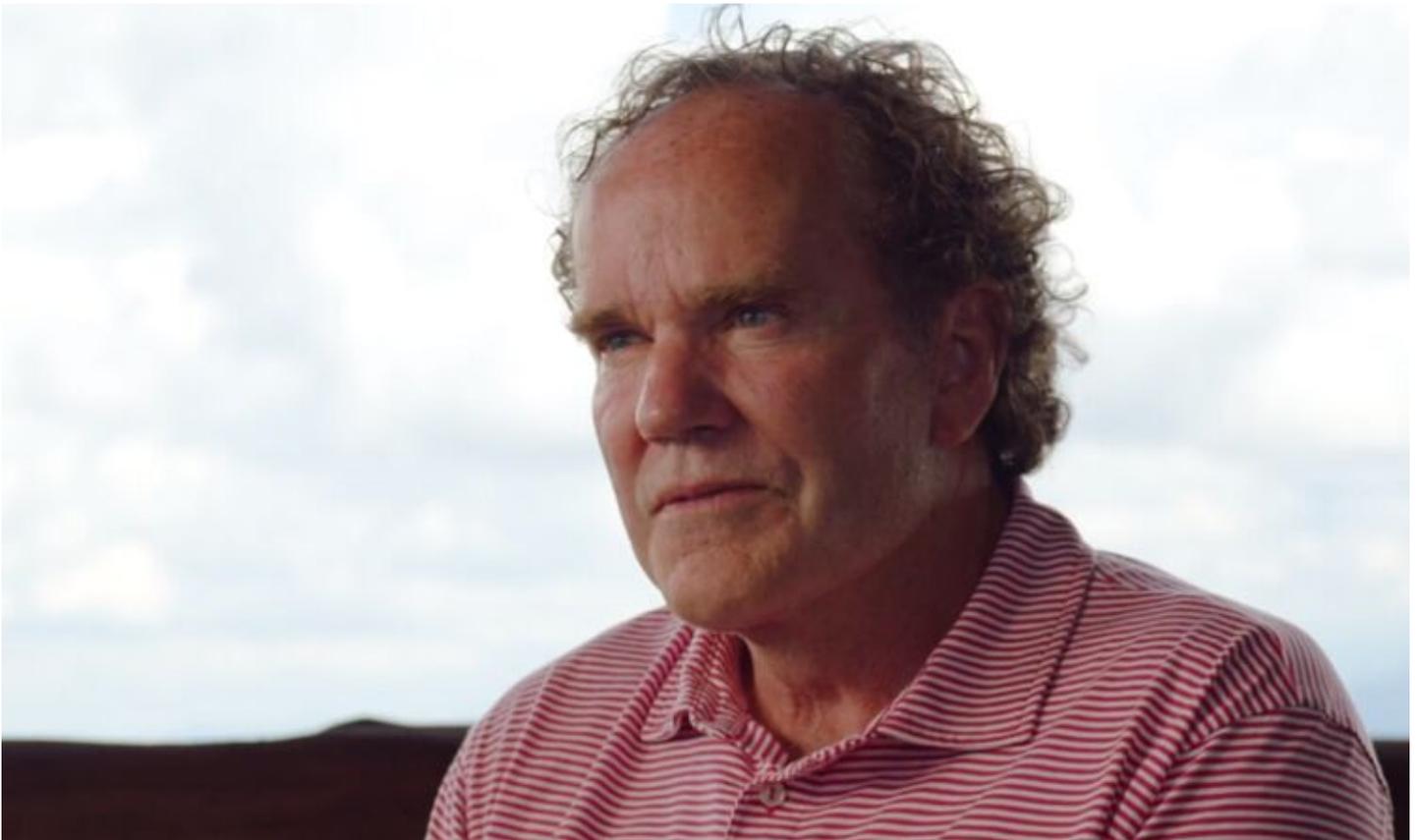
exists” that a juror based their verdict on “sufficiency of the evidence.”

“Let the deliberations play out, let one juror convince another that he is wrong, and let the jury return a verdict,” Batten, who was appointed by President George W. Bush, said in a ruling Tuesday. To convict, jurors must agree unanimously that the men are guilty beyond a reasonable doubt.

Fisher’s attorneys didn’t immediately respond to requests for comment. A Justice Department spokesman declined to comment.

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Fisher, an accountant-turned-developer, is on trial with James Sinnott, an attorney who worked with him, and Clayton Weibel, an appraiser. Prosecutors allege Fisher earned about \$60 million by offering wealthy clients investments in land easements that bar development, which were used to generate tax breaks based on “grossly inflated” land appraisals.



Fisher shown in a video promoting developments near Asheville, N.C.

Curses hurled

Problems quickly emerged after jurors began deliberating last week. Juror 26 left the other 11 and went to a different floor in the courthouse. Curses were hurled. By noon Friday, Batten hauled the unhappy crew into court, with a stern message that he would not tolerate the type of disrespect reported to him.

“There will be no telling another person ‘f— you,’ or anything like that,” Batten said, warning that he could hold them in contempt if the behavior continued. “Every one of you deserves that dignity.”

On the same day, the deliberations had deteriorated into acrimony and the jury told the judge they were “hopelessly hung,” according to a filing. The judge told lawyers that he was walking by the jury room and a juror told him “there are two to three people who will not change their mind,” the filing said.

After deliberations ended on Friday, two jurors called the judge’s clerk to complain about Juror 26. One member of the panel said that Juror 26 had said that she worked for a millionaire who “did investments for funds.” Others recounted the juror saying she “can’t put old men in jail for the rest of their lives,” prosecutors wrote in another filing.

By Monday, Batten interviewed jurors in open court and his chambers. The judge also reviewed a group chat by the jury and the foreperson’s individual messages with two jurors, according to a filing.

By that night, prosecutors asked the judge for an emergency hearing, urging him to question Juror 44 about whether he discussed “rich, White and entitled” defendants. If so, he should be removed to ensure a fair verdict. If he didn’t, Juror 26 should be removed for injecting race into deliberations by “falsely accusing her fellow jurors of race-based wrongdoing and lying to the court,” prosecutors said.

But Batten denied the request to remove any jurors on Tuesday, saying while he had “credibility concerns” about Juror 26, he couldn’t find with “utmost certainty” that she wouldn’t base her decision on the evidence.

On Wednesday, he had a change of heart. According to a filing by Fisher’s attorneys, Batten, without a new request from the lawyers, decided to remove Juror 26. The removal was over the “strong

objection” of the defendants and could underpin an appeal by Fisher and the others if they’re convicted.

(Updates with juror being removed in fourth paragraph.)

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