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Criminal Law -- Newspapers -- Impartial Jury

Harold P. Barkas

CRIMINAL LAW—NEWSPAPERS—IMPARTIAL JURY

Two years after the defendant had been convicted of rape, he utilized the Illinois Post Conviction Hearing Act to claim that the jurors had been biased to his detriment as a result of their having read grossly prejudicial newspaper accounts[1] during his trial. On appeal by the state, after the post conviction hearing resulted in a new trial, the court held, that the rights of the defendant were improperly abridged. *People v. Hryciuk*, 5 Ill. 2d 176, 125 N.E.2d 61 (1955).

The general rule, long established and closely followed, is that the power to declare a mistrial and discharge the jury is resorted to in only the most radical of cases.[2] However, great latitude is exercised by some courts,[3] while other courts are extremely conservative in their use of judicial discretion.[4] When newspapers preoccupy themselves with a trial, but no manifestation of prejudice is noted in a juror, the withdrawal of the juror lies within the province of judicial discretion.[5]

It is not enough that newspaper accounts be read by the members of the panel singly or collectively; their impact upon the panel must be of an inordinately damaging nature.[7] If impressions are derived from extra-courtroom sources, the court can accept without question the absence of prejudice from a juror if they fall within the category of "light impressions." However, "strong impressions," (which block objectivity) do constitute objection sufficient to support withdrawal.[8]

Judicial discretion is open to criticism only when grossly abused. Thus the trial court may refuse to declare a mistrial and the appellate court subsequently decline to reverse the decision since the abberration

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1. As the court stated in the instant case, "Two of the Chicago daily newspapers published articles about the trial . . . headlined in heavy print, one reading, 'State Will Ask Chair for Young Slaying Suspect,' and the other, 'Slaying Confession Read in Trial.'"

The court further stated, "On the evening before they were to render verdict . . . [J]urors] . . . read in newspapers that defendant had confessed to two murders, had boasted of attacking more than 50 women, and was described by the police as a 'vicious degenerate' . . ." People v. Hryciuk, 5 Ill. 2d 176, 180, 181, 125 N.E. 2d 61, 62 (1955).

2. Rosenblum v. State, 55 So.2d 119 (Fla. 1951); State *ex rel* Alcala v. Grayson, 156 Fla. 435, 23 So.2d 484 (1945); Jeffcoat v. State, 103 Fla. 466, 138 So. 385 (1931); People v. Murawski, 349 Ill. 236, 68 N.E.2d 273 (1946); People v. Marmion, 389 Ill. 478, 59 N.E.2d 810 (1945); People v. Harrison, 384 Ill. 201, 51 N.E.2d 172 (1943); People v. Mangano, 354 Ill. 329, 188 N.E. 475 (1933); People v. Herbert, 340 Ill. 320, 172 N.E. 740 (1930); Collins v. Dunbar, 131 Me. 337, 162 Atl. 897 (1932); Shafer v. Kansas City Ry., 201 S.W. 611 (Mo. App., 1918); *contra*: Hunter v. Wade, 169 F.2d 973 (1948).

3. Hall v. State, 136 Fla. 644, 187 So. 392 (1939).

4. Griffin v. United States, 295 Fed. 437 (3d Cir. 1924); People v. Murawski, 349 Ill. 236, 68 N.E.2d 273 (1946); Coughlin v. People, 144 Ill. 140, 33 N.E. 1 (1893).

5. Commonwealth v. Schultz, 170 Pa. Super. 504, 87 A.2d 69 (1952).

6. Willis v. State, 128 Tex. Cr. 504, 81 S.W.2d 693 (1935).

7. Wilson v. Consolidated Dressed Beef Co., 295 Pa. 168, 145 Atl. 81 (1929).

8. United States v. Burr, 25 Fed. Cas. 49, No. 14,1692g (C.C.D. Va. 1807).

may not have amounted to gross abuse.[9] The gross abuse of discretion must be of substantial prejudice to the defendant.[10] The bench, generally is permitted to exercise great latitude in its judicial discretion, since even when jurors acknowledge perusal of newspapers containing damaging accounts, it may satisfy itself that there was "little remembered" by the juror, and refuse the motion to dismiss.[11] An antiethical attitude is apparent when another court withdraws a juror if the defense can meet the burden of proof as to the periodical's having been read.[12] The defense must advance the irregularity and move for a mistrial; the court cannot do so of its own motion.[13] Where the court is convinced of the soundness of the defense's objection and is willing to remove the juror, if the defense withdraws its objection upon the juror's protestations of freedom from bias, there can be no appeal upon the grounds of prejudice concerning that juror.[14]

In the instant case, the trial court committed an obvious abuse of its judicial discretion in refusing withdrawal of jurors exposed to inflammatory newspaper accounts. The appellate court rectified the injustice by considering the opinions derived from the accounts as being of a definitely prejudicial nature and obstructing the resolution of the evidence as presented at trial, and ordered a new trial.

It appears that the appellate court was correct in holding that the defendant's rights were infringed upon.

The majority view draws a distinction between opinion of the juror and his prejudice or bias.[15] This is semantic jousting, or as stated in Smith v. Eames:[16]

> . . . The human mind is so constituted that it is almost impossible, on hearing a report freely circulated . . . to prevent it from coming to some conclusion on the subject; and this will always be the case while the mind continues susceptible to the impressions. . . .

Opinion, however, whether it is deep or superficial, must be overcome by a preponderance of evidence to the contrary. It is clear that this is an unjust position in which to place a litigant, especially in the light of our constitutional guaranty of an impartial jury. Subscription to any opinion, which is capable of expression, or admission of having read grossly prejudicial material must constitute disqualification of a juror if the substantive right to a fair trial is to be preserved.

HAROLD P. BARKAS

9. Commonwealth v. Donaducy, 167 Pa. Super. 611.
10. Green v. Commonwealth, 223 Ky. 826, 4 S.W.2d 1109 (1927); Commonwealth v. Schumann, 162 Pa. Super. 330, 57 A.2d 425 (1948).
11. United States v. Wolf, 102 F. Supp. 824 (W.D. Pa. 1952).
12. United States v. Katz, 78 F. Supp. 435 (M.D. Pa. 1948).
13. Commonwealth v. Mehlman, 163 Pa. Super. 534, 63 A.2d 400 (1949).
14. Marrin v. United States, 167 Fed. 951 (3d Cir. 1909).
15. Olive v. State, 34 Fla. 203, 15 So. 925 (1894).
16. 3 Scam. 76, 78 (1841).