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## Right to Trial by Jury, Supreme Court, Appellate Division Fourth Department People v. Perkins

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voluntarily waived his rights was clearly treated fairly, serves to advance New York's ideals regarding constitutional protections. Nonetheless, this decision of the New York State Court of Appeals exemplifies its inclination to safeguard the rights of its citizens above and beyond the federal minimum standard.

## SUPREME COURT, APPELLATE DIVISION

### FOURTH DEPARTMENT

People v. Perkins<sup>170</sup>  
(decided July 12, 1996)

The defendant, Sean Perkins, after a jury trial, was convicted of manslaughter in the first degree and criminal possession of a weapon in the second degree.<sup>171</sup> The defendant appealed and claimed, *inter alia*, that the trial judge's brief absence from the courtroom during juror *voir dire* warranted a reversal of the conviction.<sup>172</sup> Both the United States<sup>173</sup> and New York State<sup>174</sup> Constitutions grant a defendant the right to a trial by jury.<sup>175</sup> This constitutional right to a trial by jury has been interpreted to mean that a judge must be in control of a jury trial.<sup>176</sup> The Appellate Division, Fourth Department, unanimously affirmed the trial court's conviction of the defendant, holding that the trial judge's brief absence from the courtroom during *voir dire* was

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170. 645 N.Y.S.2d 693 (4th Dep't 1996).

171. *Id.* at 694.

172. *Id.*

173. U.S. CONST. art. III, § 2, cl. 3. Article III, section 2, clause 3, states in pertinent part: "The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed . . . ." *Id.*

174. N.Y. CONST. art. I, § 2. Article I, section 2 states in pertinent part: "Trial by jury in all cases in which it has heretofore been guaranteed by constitutional provision shall remain inviolate forever . . . ." *Id.*

175. *Perkins*, 645 N.Y.S.2d at 695.

176. *Perkins*, 645 N.Y.S.2d at 695 (citing *People v. Ahmed*, 66 N.Y.2d 307, 311-12, 487 N.E.2d 894, 896, 496 N.Y.S.2d 984, 986 (1985)).

“de minimus,” and thus did not deprive the defendant of a fair trial.<sup>177</sup>

In *Perkins*, the trial judge went to his chambers to pick up a pre-sentence report during the *voir dire* stage of the trial.<sup>178</sup> The judge’s chamber was across the hall from the courtroom where the jury selection was being conducted.<sup>179</sup> While the judge was in chambers, the courtroom door and the chamber door both remained open.<sup>180</sup>

The appellate division explained that the right to a jury trial guaranteed by the New York State Constitution is in place to protect a defendant against a situation where a judge is not present during a trial.<sup>181</sup> In *Perkins*, the court determined that the judge’s absence did not prejudice the defendant, and was therefore “de minimus.”<sup>182</sup> The court continued by stating that, though it would have been preferable for the judge to have called a brief recess in order to retrieve the papers from his chambers, his absence did not detract from his supervision of the trial.<sup>183</sup>

Both the First and Third Departments of the Appellate Division are in accord with the Fourth Department’s view. In *People v. Toliver*,<sup>184</sup> the trial judge similarly stepped out of the courtroom during one portion of jury selection, whereby the judge was not present when the jurors answered questions from their printed questionnaires.<sup>185</sup> Upon the judge’s return, the defendant asked

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177. *Perkins*, 645 N.Y.S.2d at 695.

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.* The court stated that the absence from the courtroom did not constitute a failure to supervise the trial. *Id.* at 695.

183. *Id.* at 695. See *People v. Patterson*, 39 N.Y.2d 288, 347 N.E.2d 898, 383 N.Y.S.2d 573 (1976), *aff’d*, 432 U.S. 197 (1977). In *Patterson*, the New York State Court of Appeals held that no one, including the judge or the defendant, can alter the “organization of the court or the mode of [the] proceedings prescribed by law.” *Id.* at 295, 347 N.E.2d at 902, 383 N.Y.S.2d at 577.

184. 212 A.D.2d 346, 629 N.Y.S.2d 746 (1st Dep’t 1995).

185. *Id.* at 348, 629 N.Y.S.2d at 747.

for a mistrial, which was denied by the trial judge.<sup>186</sup> On appeal, the appellate division agreed with the trial court judge's ruling, and held that the brief absence was insignificant, and therefore did not deprive the defendant of his constitutional right to a jury trial.<sup>187</sup>

In *People v. Torres*,<sup>188</sup> the defendant was convicted of third degree manslaughter.<sup>189</sup> The trial judge allowed summations to continue and the jury charge to be read while the judge was in the hospital.<sup>190</sup> The Appellate Division, Third Department, affirmed the conviction and determined that the trial judge did not abuse his discretion by allowing these phases of the trial to continue in his absence.<sup>191</sup>

The underlying rationale which formed the basis of the decisions in *People v. Torres*, *People v. Toliver* and *People v. Perkins* is derived from the New York State Court of Appeals ruling in *People v. Ahmed*.<sup>192</sup> In *Ahmed*, the trial judge came down with a "very bad cold" and, as a result, found it necessary to delegate some of his duties to his secretary.<sup>193</sup> Neither the prosecution nor the defense objected to the secretary's involvement.<sup>194</sup> These duties included the secretary responding to juror notes, after consulting with the judge.<sup>195</sup> It was later discovered, however, that the judge's secretary had answered

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186. *Id.*

187. *Id.* The *Toliver* court stated that "the judge's absence from the courtroom is not ground for a reversal unless injury or prejudice is shown to have resulted therefrom . . ." *Id.* at 349, 629 N.Y.S.2d at 748 (citations omitted).

188. 173 A.D.2d 977, 569 N.Y.S.2d 485 (3d Dep't 1991).

189. *Id.*

190. *Id.*, 569 N.Y.S.2d at 486.

191. *Id.* The court stated that "[t]he record offers no support for defendant's claim that the procedure created a circus-like atmosphere or that the jurors were distracted or failed to pay close attention to the substance of the jury charge." *Id.* at 977-78, 569 N.Y.S.2d at 486.

192. 66 N.Y.2d 307, 487 N.E.2d 894, 496 N.Y.S.2d 984 (1985).

193. *Id.* At 309, 487 N.E.2d at 896, 496 N.Y.S.2d at 985.

194. *Id.* at 310, 487 N.E.2d at 896, 496 N.Y.S.2d at 985.

195. *Id.* At 309, 487 N.E.2d at 896, 496 N.Y.S.2d at 985.

some of the juror's questions without consulting with the judge.<sup>196</sup>

The court of appeals determined that both the trial court and the appellate division were incorrect in allowing the secretary's activity.<sup>197</sup> The *Ahmed* court reasoned that, during jury deliberations, the function of the judge is crucial, and any deviation from the judge being in complete control of the courtroom is prejudicial to the defendant.<sup>198</sup> The court continued by stating that the failure of a judge to retain control during jury deliberations goes to the heart of the constitutional guarantee of a trial by jury.<sup>199</sup> The *Ahmed* court reinforced their ruling by stating that the concept of the judge and jury working together was intended by the framers of the New York State Constitution.<sup>200</sup>

The second circuit has dealt with this issue in the same way as New York State courts. In *United States v. Grant*,<sup>201</sup> the trial judge asked both the prosecution and defense if they would object to his briefly leaving the courtroom at various times during the reading back of testimony to the jury.<sup>202</sup> Neither side objected, and the judge instructed the jury as to the reason for his occasional absence from the courtroom.<sup>203</sup> The defendant later appealed, citing the judge's absence as prejudicial error.<sup>204</sup> The court held that, although it is preferred that the judge remain in

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196. *Id.*

197. *Id.*

198. *Id.* at 310, 487 N.E.2d at 895, 496 N.Y.S.2d at 985.

199. *Id.* at 311, 487 N.E.2d at 896, 496 N.Y.S.2d at 986. The *Ahmed* court stated that the constitutional right to a trial by jury "has been interpreted as guaranteeing the right to trial by jury as it had existed at common law." *Id.* The court continued by stating that "[s]ubstantial judicial authority has . . . concluded that the presence and active supervision of a judge constitute an integral component of the common-law right." *Id.* at 311-12, 487 N.E.2d at 896, 496 N.Y.S.2d at 986.

200. *Id.* at 311, 487 N.E.2d at 896, 496 N.Y.S.2d at 986.

201. 52 F.3d 448 (2d Cir. 1995).

202. *Id.* at 449.

203. *Id.* The judge needed to leave the courtroom in order to "fetch" papers. *Id.*

204. *Id.*

the courtroom for the duration of the entire trial, his brief absence did not constitute abuse of discretion, and did not warrant a new trial.<sup>205</sup>

The right to a jury trial is a right similarly guaranteed by the United States and New York State Constitutions. Thus, an absence by a trial judge during an insubstantial portion of the trial does not impinge on one's constitutional right to a jury trial. In *Perkins*, the judge's absence was deemed to be during a non-substantive portion of the trial and was thus considered de minimus and not in violation of the defendant's constitutional right to a jury trial.<sup>206</sup>

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205. *Id.* at 450. See *United States v. Pfingst*, 477 F.2d 177 (2d Cir. 1963). In *Pfingst*, the court held that a brief absence during jury deliberations does not prejudice the defendant. *Id.* at 197.

206. *Perkins*, 645 N.Y.S.2d at 695.

