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Trial by Jury

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those involving the right to a speedy trial,²⁰⁷¹ claims challenging the legality of sentences,²⁰⁷² and defendant's competency to stand trial.²⁰⁷³ However, under federal law such a claim is waived unless the defendant enters a conditional plea pursuant to Rule 11 of the Federal Rules of Criminal Procedure.

SUPREME COURT, APPELLATE DIVISION

FIRST DEPARTMENT

People v. Rampersant²⁰⁷⁴
(Decided April 2, 1992)

Defendant claimed that his right to trial by an impartial jury guaranteed by article I, section 2 of the New York State Constitution²⁰⁷⁵ was violated because the court allowed only one question to be asked of the third panel of prospective jurors as a whole, while permitting both the prosecution and defense equal time for questioning the first and second panel individually.²⁰⁷⁶ The appellate division held that limiting the prosecution and defense counsel to one question directed at the third panel as a whole denied fair opportunity to question prospective jurors.²⁰⁷⁷ The decision of the supreme court was unanimously reversed and remanded for a new trial.²⁰⁷⁸

2071. See *People v. Seaberg*, 74 N.Y.2d 1, 9, 541 N.E.2d 1022, 1025, 543 N.Y.S.2d 968, 971 (1989) (citing *People v. Blakely*, 34 N.Y.2d 311, 314-15, 313 N.E.2d 763, 764-65, 357 N.Y.S.2d 459, 462 (1974)).

2072. *Seaberg*, 74 N.Y.2d at 9, 541 N.E.2d at 1025, 543 N.Y.S.2d at 971 (citing *People v. Francabandera*, 33 N.Y.2d 429, 434 n.2, 310 N.E.2d 292, 294 n.2, 354 N.Y.S.2d 609, 612 n.2 (1974)).

2073. *Id.* at 9, 541 N.E.2d at 971, 543 N.Y.S.2d at 971 (citing *People v. Armlin*, 37 N.Y.2d 167, 172, 332 N.E.2d 870, 874, 371 N.Y.S.2d 691, 697 (1975)).

2074. 182 A.D.2d 373, 581 N.Y.S.2d 784 (1st Dep't 1992).

2075. N.Y. CONST. art I, § 2.

2076. *Rampersant*, 182 A.D.2d at 373, 581 N.Y.S.2d at 784.

2077. *Id.* at 374, 581 N.Y.S.2d at 785.

2078. *Id.* at 373, 581 N.Y.S.2d at 784.

During the voir dire, the trial judge limited counsel's questioning to ten minutes each for the first panel, five minutes each during the second panel, and a single question directed to the entire third panel.²⁰⁷⁹ Defendant was convicted of grand larceny in the fourth degree,²⁰⁸⁰ and subsequently appealed the conviction.²⁰⁸¹

At the appellate division, the court described the right of the accused to an impartial jury as the most basic right of the criminal process.²⁰⁸² According to the court, the right to an unbiased panel is protected by giving the parties an opportunity to question jurors.²⁰⁸³ However, the appellate division acknowledged that trial courts have broad discretion to limit the voir dire²⁰⁸⁴ so as to keep the process from becoming overly time-consuming and prolonged.²⁰⁸⁵ The court emphasized the traditional discretion of the trial court as explained by *People v. Jean*,²⁰⁸⁶ where the New York Court of Appeals held that the trial court did not abuse its discretion by placing time limits of fifteen minutes during the

2079. *Id.*

2080. N.Y. PENAL LAW § 155.30 (5) (McKinney 1987).

2081. *Rampersant*, 182 A.D.2d at 373, 581 N.Y.S.2d at 784.

2082. *Id.* at 373, 581 N.Y.S.2d at 784 (citing *People v. Branch*, 46 N.Y.2d 645, 389 N.E.2d 467, 415 N.Y.S.2d 985 (1979)). The *Branch* court held that a new trial was required where a juror had been employed as a police officer in the county, and had professional and personal relationship with state trial attorney. *Branch*, 46 N.Y.2d at 650-51, 389 N.E.2d at 468-69, 415 N.Y.S.2d at 987.

2083. *Rampersant*, 182 A.D.2d at 374, 581 N.Y.S.2d at 784 (citing *People v. Boulware*, 29 N.Y.2d 135, 272 N.E.2d 538, 324 N.Y.S.2d 30 (1971)). The court in *Boulware* stated that defense counsel was not permitted to question "prospective jurors about their knowledge of or attitudes towards matters of law." *Boulware*, 29 N.Y.2d at 141, 272 N.E.2d at 541, 324 N.Y.S.2d at 33.

2084. *Id.* at 374, 581 N.Y.S.2d at 785 (citing *People v. Jean*, 75 N.Y.2d 744, 551 N.E.2d 90, 551 N.Y.S.2d 889 (1989)).

2085. *Rampersant*, 182 A.D.2d at 374, 581 N.Y.S.2d at 785 (citing *People v. Pepper*, 59 N.Y.2d 353, 452, N.E.2d 1178, 465 N.Y.S.2d 850 (1983)). The *Pepper* court held that the court's attempt to curtail repetitious questioning of potential jurors did not deprive counsel of fair opportunity to examine panel. *Pepper*, 59 N.Y.2d at 358-59, 452 N.E.2d at 1180, 465 N.Y.S.2d at 852-53.

2086. 75 N.Y.2d 744, 551 N.E.2d 90, 551 N.Y.S.2d 889 (1989).

first two rounds, and ten minutes during the third round.²⁰⁸⁷ The *Jean* court determined that such limitations did not prejudice the defendant, and that fair opportunity for questioning was given even though counsel did not have enough time to examine each juror individually.²⁰⁸⁸

Similarly, in *People v. Brown*,²⁰⁸⁹ where the second round of questioning was limited to fifteen minutes, and the third round to ten minutes, no abuse of discretion was found.²⁰⁹⁰ Likewise, in *People v. Garrow*,²⁰⁹¹ the appellate division found that the trial court did not abuse its discretion by limiting voir dire to ten minutes of questioning in the first three rounds, and three minutes in the fourth round.²⁰⁹² That conclusion, however, was compelled in part by the fact that the trial court conducted thorough preliminary examination of prospective jurors, and allowed counsel to provide questions to the court.²⁰⁹³

With these precedents in mind, the *Rampersant* court stated that limitations of voir dire must be tempered by the requirement that fair opportunity is provided for parties to examine prospective jurors about relevant questions not previously posed by counsel.²⁰⁹⁴ The court ruled that limiting counsels to one question to the entire third panel did not afford fair opportunity to question panel members about relevant unexplored topics.²⁰⁹⁵ In the court's view, the fact that the same prospective jurors were present during each round of questioning, and that the trial judge conducted additional examination did not mitigate against the lost

2087. *Id.* at 745, 551 N.E.2d at 91, 551 N.Y.S.2d at 890.

2088. *Id.*

2089. 131 A.D.2d 582, 516 N.Y.S.2d 498 (2d Dep't 1987).

2090. *Id.* at 582, 516 N.Y.S.2d at 499.

2091. 151 A.D.2d 877, 542 N.Y.S.2d 849 (3d Dep't 1989).

2092. *Id.* at 877, 522 N.Y.S.2d at 851.

2093. *Id.* at 878, 542 N.Y.S.2d at 851; *see also* *People v. Davis*, 166 A.D.2d 453, 560 N.Y.S.2d 499 (2d Dep't), *cert. denied*, 565 N.E.2d 522, 563 N.Y.S.2d 773 (1990) (limiting voir dire to 10 minutes of questioning in third round did not constitute abuse of discretion).

2094. *Rampersant*, 182 A.D.2d at 374, 581 N.Y.S.2d at 785.

2095. *Id.*

opportunity for questioning.²⁰⁹⁶ Defendant's conviction was thus overturned, and the matter was remanded for a new trial.²⁰⁹⁷

As in New York State courts, time limits on voir dire are permitted in federal courts. The United States Court of Appeals for the Eighth Circuit held in *Hicks v. Mickelson*²⁰⁹⁸ that a limitation of voir dire by the trial judge to fifteen minutes did not constitute plain error.²⁰⁹⁹ Although *Hicks* involved a civil matter, the court expressed the view in dicta, that the broad discretion granted to the district court was applicable in criminal matters as well.²¹⁰⁰ The court also noted that while in many district courts, voir dire is conducted entirely by the court, most state courts allow examination by counsel.²¹⁰¹ The court concluded that the right to an impartial jury was best protected by entrusting the process to the discretion of experienced district court judges.²¹⁰²

In conclusion, the right to an impartial jury protected by the Federal and New York State Constitutions is violated when counsel is not given fair opportunity to question potential jurors, and the lost opportunity presents a possibility of prejudice to that party. While a court is permitted to place temporal limits on voir dire, those limits will be subject to appellate scrutiny.

2096. *Id.*

2097. *Id.* at 373, 581 N.Y.S.2d at 784.

2098. 835 F.2d 721 (8th Cir. 1987).

2099. *Id.* at 725.

2100. *Id.*

2101. *Id.*

2102. *Id.* at 725-26.