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## Court of Appeals of New York People v. Jeanty

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# Court of Appeals of New York People v. Jeanty

**Cover Page Footnote**

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## RIGHT TO TRIAL BY JURY

*U.S. CONST. amend. VI:*

*In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district where the crime has been committed . . . .*

*N.Y. CONST. art. I, § 2:*

*Trial by jury in all cases in which it has heretofore been guaranteed by constitutional provision shall remain inviolate forever, but a jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law. The legislature may provide, however, by law, that a verdict may be rendered by no less than five-sixths of the jury in any civil case. A jury trial may be waived by the defendant in all criminal cases, except those in which the crime charged may be punishable by death, by a written instrument signed by the defendant in person in open court before and with the approval of a judge or justice of a court having jurisdiction to try the offense. The legislature may enact laws, not inconsistent herewith, governing the form, content, manner and time of presentation of the instrument effectuating such waiver.*

## COURT OF APPEALS OF NEW YORK

People v. Jeanty<sup>1</sup>  
(decided April 4, 2000)

The constitutional issue before the New York Court of Appeals in the instant case was whether it was an infringement on the defendant's right to a trial by jury, to have a juror replaced by an alternate once the trial had begun.<sup>2</sup> Although the United States Supreme Court has not ruled on this issue, the circuits have examined it and have found that it is not a violation of the Federal Constitution's right to trial by jury for a juror to be replaced by an alternate, because the defendant has had a say in the selection of

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<sup>1</sup> 94 N.Y.2d 507, 727 N.E.2d 1237, 706 N.Y.S.2d 683 (2000). Three cases were consolidated for the purposes of this appeal. They are *People v. Jeanty*, *People v. Jones* and *People v. Artis*.

<sup>2</sup> *Id.* at 517, 727 N.E.2d at 1244, 706 N.Y.S.2d at 690.

that alternate juror. The Court of Appeals ruled similarly in the case at bar, finding a defendant's right to a jury trial was not infringed as long as the defendant had a hand in selecting the alternate juror.

In three separate cases, defendants were convicted of various crimes, and the Appellate Division affirmed each conviction.<sup>3</sup> All three defendants appealed on the basis that at trial, the Supreme Court improperly applied CPL § 270.35(2) as amended in 1996.<sup>4</sup> In each case the Court of Appeals affirmed the convictions finding that the Supreme Court did indeed apply CPL § 270.35 properly.<sup>5</sup> In *People v. Artis*, one of the defendants also argued that his right to a trial by jury as guaranteed by the New York State Constitution<sup>6</sup> was hampered because the two-hour time limit required by the statute was, as he claimed, arbitrary.<sup>7</sup> The Court of Appeals found this not to be the case by stating that the two-hour time limit was not constitutionally infirm, as averred by the defendant in *Artis*.<sup>8</sup>

CPL § 270.35(2), as amended, allows for the discharge of sworn jurors and replacement by alternate jurors under certain circumstances.<sup>9</sup> In *People v. Jeanty*,<sup>10</sup> a sworn juror called the

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<sup>3</sup> *Id.* at 512, 727 N.E.2d at 1240-41 706 N.Y.S.2d at 687.

<sup>4</sup> *Id.* at 511, 727 N.E.2d at 1240, 706 N.Y.S.2d at 686.

<sup>5</sup> *Id.*

<sup>6</sup> N.Y. CONST. Art. I, § 2. This section provides in pertinent part: "Trial by jury in all cases in which it has heretofore been guaranteed by constitutional provision shall remain inviolate forever." *Id.*

<sup>7</sup> *Jeanty*, 94 N.Y.2d at 517, 727 N.E.2d at 1244, 706 N.Y.S.2d at 690.

<sup>8</sup> *Id.* at 511-12, 727 N.E.2d at 1240, 706 N.Y.S.2d at 686.

<sup>9</sup> N.Y. CRIM. PROC. LAW § 270.35(2) (McKinney 2000). Section 270.35(2)(a) provides in pertinent part:

In determining pursuant to this section whether a juror is unable to continue serving by reason of illness or other incapacity, or is for any other reason unavailable for continued service, the court shall make a reasonably thorough inquiry concerning such illness, incapacity or unavailability, and shall attempt to ascertain when such juror will be appearing in court. If such juror fails to appear, or if the court determines that there is no reasonable likelihood such juror will be appearing, in court within two hours of the time set by the court for the trial to resume, the court may presume such juror is unavailable for continued service and may discharge such juror.

court to inform it that he was injured in a car accident and as a result, had to go to the hospital.<sup>11</sup> He called the court several hours later to say that he did not know when he could return to jury duty due to his injuries.<sup>12</sup> Over defendant's objection, the Supreme Court brought in an alternate juror for the remainder of the trial.<sup>13</sup> Defendant appealed his conviction of robbery, assault and weapons possession, but the Appellate Division affirmed, holding that the discharge was proper.<sup>14</sup>

*People v. Jones* involved the absence of two jurors.<sup>15</sup> One juror had the flu and the second juror could not appear because his store was burglarized and he had to talk to the police about the burglary.<sup>16</sup> The Supreme Court continued the trial with alternate jurors, despite defendant's objection that the replacement was premature.<sup>17</sup> Defendant was later convicted of second degree murder and weapon possession. Appellate Division affirmed the convictions, finding the issue of jury discharge was not preserved for appeal.<sup>18</sup>

In *People v. Artis*, the defendant raised a constitutional claim in addition to a claim similar to the prior claims in *Jeanty* and *Jones*.<sup>19</sup> In *Artis*, a juror complained of not feeling well during the court's final charge to the jury.<sup>20</sup> She was sent home for the lunch break and later, when called by the court clerk, said she was feeling too sick to return to the court that day.<sup>21</sup> Over defendant's objection, the Supreme Court swore in an alternate juror and

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*Id.*

<sup>10</sup> The defendant in *Jeanty* was on trial for robbery in the first degree, robbery in the second degree, assault in the second degree, assault in the third degree, and weapons possession in the fourth degree. *People v. Jeanty*, 260 A.D.2d 580, 688 N.Y.S.2d 607 (2d Dep't 1999).

<sup>11</sup> *Jeanty*, 94 N.Y.2d at 512, 727 N.E.2d at 1240, 706 N.Y.S.2d at 686.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*, 727 N.E.2d at 1240-41, 706 N.Y.S.2d at 687.

<sup>14</sup> *Jeanty*, 260 A.D.2d at 580, 688 N.Y.S.2d. at 607.

<sup>15</sup> *Jeanty*, 94 N.Y.2d at 512, 727 N.E.2d at 1241, 706 N.Y.S.2d at 687.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Jeanty*, 94 N.Y.2d at 512, 727 N.E.2d at 1241, 706 N.Y.S.2d at 687.

<sup>21</sup> *Id.*

repeated the entire final charge to the jury.<sup>22</sup> Defendant was later convicted of burglary in the second degree, and the Appellate Division affirmed, finding no error in the trial court's decision to discharge a juror at that stage of the trial and replace with an alternate.<sup>23</sup>

The Court of Appeals affirmed in all three cases, finding no error in the Supreme Court's application of CPL § 270.35.<sup>24</sup> The court, in discussing the appeals of all three defendants, began its analysis by tracing the history of the 1996 amendment that was at issue in each case at bar. It noted the amendment's genesis in an earlier Court of Appeals decision, *People v. Page*.<sup>25</sup> In *Page*, the Court of Appeals ordered a new trial for the defendant when a juror was discharged after being 45 minutes late and was replaced with an alternate.<sup>26</sup> The court stated,

The same cannot be said in *People v. Page* where the trial court failed to ascertain when the absent juror might arrive at the courthouse. Without some reasonable effort shown on the record, we cannot infer a sufficient legal basis upon which the court could invoke the "unavailable for continued service" provision. There must therefore be a reversal and a new trial.<sup>27</sup>

The amendment to CPL § 270.35 codifies the requirement in *Page* that the court make reasonable efforts to "ascertain when the absent juror might arrive at the courthouse."<sup>28</sup>

The companion case to *Page*, *People v. Washington*, was the source for the remaining portion of the 1996 amendment.<sup>29</sup> In the *Washington* case, the Supreme Court waited two hours for the arrival of a missing juror and made extensive inquiries, placing

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<sup>22</sup> *Id.*

<sup>23</sup> *People v. Artis*, 262 A.D.2d 215, 694 N.Y.S.2d 5 (1st Dep't 1999).

<sup>24</sup> *Jeanty*, 94 N.Y.2d at 513, 727 N.E.2d at 1241, 706 N.Y.S.2d at 687.

<sup>25</sup> 72 N.Y.2d 69, 526 N.E.2d 783, 531 N.Y.S.2d 83 (1996)

<sup>26</sup> 72 N.Y.2d at 71-72, 526 N.E.2d at 784.

<sup>27</sup> *Id.* at 74, 526 N.E.2d at 785.

<sup>28</sup> *Jeanty*, 94 N.Y.2d at 513, 727 N.E.2d at 1241, 706 N.Y.S.2d at 687 (quoting *Page*, 72 N.Y.2d at 74); See N.Y. CRIM. PROC. LAW § 270.35(2).

<sup>29</sup> *Jeanty*, 94 N.Y.2d at 514, 727 N.E.2d at 1242, 706 N.Y.S.2d at 688.

these inquiries on the record.<sup>30</sup> After the lapse of two hours, the court determined that it had no way of knowing the whereabouts of the juror, and proceeded to replace him with an alternate.<sup>31</sup> There, the Court of Appeals affirmed the conviction, finding,

[T]he trial court's particularized findings and action on the record in the effort to ascertain the circumstances of the juror's absence and of the likelihood of his continued availability to serve cannot be said to constitute error as a matter of law. Thus, the order affirming the conviction in that case must be affirmed.<sup>32</sup>

This decision found its way into the amendment to CPL § 270.35 in the following form:

If such juror fails to appear, or if the court determines that there is no reasonable likelihood such juror will be appearing, in court within two hours of the time set by the court for the trial to resume, the court may presume such juror is unavailable for continued service and may discharge such juror.<sup>33</sup>

All three defendants in the case at bar made the argument that the two hour rule in the statute applied only to unreachable, missing jurors.<sup>34</sup> and for the second category of jurors, namely jurors whose whereabouts are known, and it is unknown when they can return to the court, the "reasonably thorough inquiry" portion of the statute applied.<sup>35</sup> The Court of Appeals flatly rejected this argument, stating that both types of situations caused delay in the trial, and the legislative intent of the amendment was to avoid delays and to give the court specific guidelines to follow in both scenarios.<sup>36</sup>

Alternatively, defendants argued that the statute, by the use of the word "presume," merely created a rebuttable presumption of

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<sup>30</sup> *Page*, 72 N.Y.2d at 71, 526 N.E.2d at 784. The two cases, *People v. Page* and *People v. Washington*, were consolidated upon appeal.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 74, 526 N.E.2d at 785.

<sup>33</sup> CPL § 270.35(2)(a).

<sup>34</sup> *Jeanty*, 94 N.Y.2d at 514, 727 N.E.2d at 1242, 706 N.Y.S.2d at 688.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

unavailability after the two-hour time period had elapsed, and not a bright line rule that after two hours, a missing juror may be discharged by the court.<sup>37</sup> Defendants argued that the presumption could be rebutted in their cases since the jurors were only unavailable temporarily and could return to the trial the following day.<sup>38</sup> The Court of Appeals was unconvinced by this argument, stating that it would be illogical to interpret that statute in this way because “the incorporation of a rebuttable presumption . . . is at direct odds with the legislative purpose of providing clear guidelines for trial courts to follow.”<sup>39</sup>

A third argument put forth by defendants was that allowing discharge of a juror after two hours would render unnecessary the portion of the statute that requires a “reasonably thorough inquiry.”<sup>40</sup> The court disagreed with this statutory interpretation, stating firstly that this rule did not allow the court to neglect its statutory duty to make inquiries after a juror was missing, and secondly, absent such inquiry, the court would not be informed and therefore, would lack the discretion to make a decision discharging a juror.<sup>41</sup>

Lastly, the defendant in *Artis* made a constitutional argument that CPL § 270.35 infringed upon his right to a trial by jury, as guaranteed in the New York constitution.<sup>42</sup> The Court of Appeals rejected it, finding that the case at bar was unlike *People v. Anderson*<sup>43</sup> and *Page*.<sup>44</sup> The court stated, “The question under *Page* and *Anderson* is whether the substitute of an alternate in whose selection the defendant has had a voice is arbitrary or has been made without good cause as prescribed by law.”<sup>45</sup> The court

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Jeanty*, 94 N.Y.2d at 515-16, 727 N.E.2d at 1243 706 N.Y.S.2d at 689.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*, 727 N.E.2d at 1243-44, 706 N.Y.S.2d at 690.

<sup>42</sup> *Id.* at 517, 727 N.E.2d at 1244 706 N.Y.S.2d at 690. N.Y. CONST. Art. I, § 2. This section provides in pertinent part: “Trial by jury in all cases in which it has heretofore been guaranteed by constitutional provision shall remain inviolate forever.” *Id.*

<sup>43</sup> 70 N.Y.2d 729, 514 N.E.2d 377, 519 N.Y.S.2d 957 (1987).

<sup>44</sup> *Page*, 72 N.Y.2d 69, 526 N.E.2d 783.

<sup>45</sup> *Jeanty*, 94 N.Y.2d at 517 727 N.E.2d at 1244, 706 N.Y.S.2d at 690 (quoting *Page*, 72 N.Y.2d at 73).



found the instant case unlike *Anderson* in that the statute under scrutiny, CPL § 270.35 was not arbitrary at all, since the “reasonably thorough inquiry” portion of the rule protected from any arbitrary decision making by the court.<sup>46</sup> Additionally, the court found that the two-hour time limit was not arbitrary either. Rather, “it strikes a constitutionally acceptable balance between the need to avoid uncertainty and delay, and the defendant’s right to an orderly jury trial.”<sup>47</sup>

Federal courts have interpreted the Sixth Amendment of the Federal Constitution in a similar manner.<sup>48</sup> Although the United States Supreme Court has not published an opinion on this exact issue, several circuits have done so. In *Perez v. Marshall*, the Ninth Circuit found that the discharge of a juror, even after deliberations had begun, was not violative of the Sixth Amendment’s right to trial by jury because “the trial court’s determination that good cause existed for the removal of juror Robles is well-supported by the record.”<sup>49</sup>

The Fifth Circuit similarly held in *United States v. Rodriguez*<sup>50</sup> when an original juror was replaced by an alternate without obtaining a reason for the original juror’s absence.<sup>51</sup> The court analyzed the Federal Rules of Criminal Procedure that authorized such dismissal.<sup>52</sup> The circuit court found that, “the trial

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<sup>46</sup> *Id.*, at 518, 727 N.E.2d at 1244, 706 N.Y.S.2d at 690.

<sup>47</sup> *Id.*, 727 N.E.2d at 1245, 706 N.Y.S.2d at 691.

<sup>48</sup> U.S. CONST. Amend. VI. The Sixth Amendment provides in pertinent part: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district where the crime has been committed . . . .” *Id.*

<sup>49</sup> 119 F.3d 1422, 1428 (9th Cir. 1997).

<sup>50</sup> 573 F.2d 330 (5th Cir. 1978).

<sup>51</sup> *Id.* at 331.

<sup>52</sup> *Id.* at 332. FED. R. CRIM. P. 24 (c) states in pertinent part:

- (1) The court may empanel no more than 6 jurors, in addition to the regular jury, to sit as alternate jurors. An alternate juror, in the order called, shall replace a juror who becomes or is found to be unable or disqualified to perform juror duties. Alternate jurors shall (i) be drawn in the same manner, (ii) have the same qualifications, (iii) be subject to the same examination and challenges, and (iv) take the same oath as regular jurors. An alternate juror has the same functions, powers, facilities and privileges as a regular juror . . . . (3) Retention of

judge, in his sound discretion, may remove a juror and replace him with an alternate juror whenever facts are presented which convince the trial judge that the juror's ability to perform his duty as a juror is impaired."<sup>53</sup> As long as the trial judge, in his "sound discretion" replaced a juror with an alternate, his decision would not be disturbed "absent a showing of bias or prejudice to the defendant."<sup>54</sup> "Hence, when a juror is absent from court for a period sufficiently long to interfere with the reasonable dispatch of business, there may be a "sound" basis for his dismissal," stated the Fifth Circuit in *Rodriguez* upon analyzing the facts.<sup>55</sup>

In conclusion, federal and New York courts have treated the issue of replacement of discharged jurors with alternate jurors similarly. Under federal and New York law, it is not a violation of the defendant's right to trial by jury if a juror is replaced by an alternate after the onset of trial, as long as the exchange is done for good cause. The Ninth Circuit went further than the New York Court of Appeals in finding an absence of a Sixth Amendment violation when a juror was replaced even after jury deliberations had begun.<sup>56</sup>

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alternate jurors. When the jury retires to consider the verdict, the court in its discretion may retain the alternate jurors during deliberations. If the court decides to retain the alternate jurors, it shall ensure that they do not discuss the case with any other person unless and until they replace a regular juror during deliberations. If an alternate replaces a juror after deliberations have begun, the court shall instruct the jury to begin its deliberations anew.

*Id.*

<sup>53</sup> *Rodriguez*, 573 F.2d at 331.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* The original juror called the court and said he was not coming in to court that day, that he was going to work instead. Without further inquiry, the court replaced him with an alternate, over defendant's objection. *Id.* at 331-32.

<sup>56</sup> *Perez*, 119 F.3d at 1427.