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JUROR CONCEALMENT – A TIME FOR CLARITY AND CHANGE

Florida case law remains unsettled regarding the circumstances under which juror concealment will merit a new trial. The evolution of case law in Florida has created a dichotomous method for determining when a new trial is warranted.

The seminal case regarding juror concealment is ***Loftin v. Wilson,*** 67 So. 2d 185 (Fla. 1953), wherein a juror had had a dispute with one defendant, and the concealed dispute was not brought to the attention of the co-defendant, who was jointly liable for any damages. The court used a two-pronged analysis to determine whether juror concealment warranted a new trial. First, the information concealed must be material and relevant to the case at issue; and second, the concealment must have influenced the outcome of the trial. ***Id.*** at 192-193.

Juror Concealment of Statutory Qualifications

In the case of ***State v. Rodgers,*** 347 So. 2d 610 (Fla. 1977), the court addressed the issue of juror concealment in regard to statutory qualification to sit on the jury (such as minority, convicted felons whose rights have not been restored, etc.). In the ***Rodgers*** case, the court determined that the

complaining party must show that the lack of qualification affected the verdict or prevented a fair trial.

The actual harm or prejudice standard of the ***Rodgers*** case has been criticized widely, on the same grounds given by Judge Hatchett in his dissent to the ***Rodgers*** opinion. Judge Hatchett opined that the legislature had determined that persons not meeting the statutory qualifications were incompetent to serve on juries. It was not the place of the judiciary to allow unqualified persons to sit on a jury simply because their presence did not create actual harm or prejudice. ***Id.*** at 1370-1371.

Concealment Unrelated to Juror Qualification

In ***De La Rosa v. Zequeira,*** 659 So. 2d 239, 240 (Fla. 1995), the court held that juror concealment in regard to anything other than statutory qualification would merit a new trial if the complaining party could show that the juror actually concealed information, whether intentionally or not, the information concealed was material and relevant, and the concealment was not due to a lack of diligence by the complaining party. The court did not require that the concealment be prejudicial to the complaining party.

Several cases have interpreted the ***De La Rosa*** opinion in ways that are arguably inconsistent with the spirit of the decision. For example, the case of ***Murray v. State,*** 3 So. 3d 1108 (Fla. 2009), required that juror concealment be intentional in order to merit a new trial.

The case of ***McCauslin v. O'Connor,*** 985 So. 2d 558 (Fla. 5th DCA 2008) gave teeth to the materiality requirement of ***De La Rosa. McCauslin*** involved a situation where two jurors failed to disclose having been injured in auto accidents despite clear questioning on the subject by plaintiff's counsel and the judge. The 5th DCA defined materiality as any issue so substantial that if the facts were known, the complaining party would likely have used a peremptory challenge to exclude the juror from the jury. ***Id.*** at 561.

The ***McCauslin*** court determined that juror concealment of past automobile accidents was not material because the defense

did not use their peremptories on other jurors who had disclosed injuries from prior accidents. ***Id.*** The court also criticized defense counsel for not following up with questions on the issue, commenting that the defense had not asked questions that sufficiently inquired "about information that potential jurors [were] being asked to disclose." ***Id.*** at 563.

There have been several notable dissents that may influence future case law on the issue of jury concealment. The dissent in the ***McCauslin*** case pointed out that the appellate court was interpreting the record, despite being admittedly unable to recreate the dynamic courtroom atmosphere. The dissent argued that the appellate court's opinion did not adhere to the abuse of discretion standard. Instead, the appellate court was exercising its own judgment without first finding that the trial judge had abused his discretion. ***Id.*** at 562.

Additionally, Judge Harris' dissent in ***James v. State***, 751 So. 2d 682, 684-85 (Fla. 5th DCA 2000), opined that intentional deception on the part of a juror should warrant a new trial. His reasoning was that a juror willing to intentionally deceive counsel is probably not capable of abiding by the juror's oath. Consequently, it remains to be seen whether separate standards will govern intentional and unintentional juror concealment.

The future line of cases regarding juror concealment may adhere to the proper abuse of discretion standard set forth by the dissent in ***McCauslin***. The issues of intentional concealment, and concealment regarding statutory qualification, remain to be settled by future litigation, although ***Rodgers*** and ***De La Rosa*** (as modified by ***Murray***) set the present standards for juror concealment.

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