

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD DAVID PARR,

Defendant-Appellant.

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UNPUBLISHED

November 30, 2006

No. 262202

St. Joseph Circuit Court

LC No. 03-011923-FC

Before: O’Connell, P.J., and White and Markey, JJ.

O’CONNELL, P.J. (*concurring*).

I concur with the majority opinion.<sup>1</sup> I write separately to say that a cornerstone of any criminal jury trial is that both the defendant and the prosecutor have the opportunity to select a fair and impartial jury. By asking questions of individual jurors, the voir dire examination allows both the prosecutor and defense counsel an opportunity to determine if an individual juror or an entire panel is biased or prejudiced. If an individual juror, or a panel of jurors, is determined to be biased or prejudiced, or has the appearance of being biased or prejudiced, then the trial court has the responsibility to excuse that juror or to declare a mistrial and impanel a new jury.

In the present case, the trial began the morning of December 7, 2004. After calling the initial 12 jurors to sit in the jury box, the trial judge introduced the case by telling the prospective jurors:

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<sup>1</sup> Sometimes attorneys are required to represent obviously guilty citizens. The difficult job of these lawyers is to ensure that the accused is afforded all of his or her rights that are guaranteed under our constitution. One of these guaranteed rights is a fair and impartial trial before an unbiased jury. Protection of this right is the essence of ordered liberty under our constitution, and it is significantly more important than the guilt or innocence of a single individual. In this case, the right to a fair and impartial jury was not protected. Defendant’s impaneled jury appeared to be tainted by the jury selection process. In such cases, the accused is entitled to a new trial before an unbiased jury. While some may claim that a new trial under these circumstances is a waste of judicial resources, I believe it is essential to protect the core beliefs of a free society.

I would ask, this case involves a criminal sexual misconduct in this particular matter, and that's what the defendant is charged with. . . . Would the fact of this charge deals with a charge of criminal misconduct that might go back some period of time dealing with a minor child cause any of you difficulty sitting here as jurors today.

During voir dire, three potential jurors indicated that they knew, or were at least familiar with, defendant. All three of these potential jurors were dismissed for cause. However, on the basis of the comments of these three potential jurors, the defendant moved for a mistrial. Defense counsel argued:

This is the most egregious situation that I have seen in a jury panel that directly relates to the point that we're here today, is to try this gentleman on criminal sexual conduct. And there is absolutely no doubt that – Mr. Carpenter [potential juror] laid flat out to that jury what was his opinion and others. And remember, the statement is he, himself, as well as others on the street. So he's rendering not only his personal opinion but he's rendering an opinion of other people, character evidence that we know is not admissible unless the defendant raises it. So, Your Honor, I personally believe that this trial is tainted, it is damaged, and that the cumulative effect of those statements renders it impossible for this defendant to get a fair trial.

The prosecution, for the same reasons as defendant, also felt a mistrial was warranted. The prosecutor agreed with defense counsel, stating:

I agree with Mr. Grubbs. I have tried – I was trying to think – trying to get the number, but I've tried probably in the neighborhood of 125 to 150 cases in this courtroom as prosecutor. Probably another, I don't know, 15 or 20 as defense attorney. And I never saw a juror say anything like that during selection. I can't conceive of what else he could have said – he virtually said in code, "I know he's a pervert." And I'd rather try this case again next month than three years from now.

The trial court decided to deny the motion for a mistrial.

In my opinion, when both the prosecutor and the defense counsel agree that a jury panel has been tainted by extraneous jury comments, it would be wise on behalf of the trial court to grant deference to the attorneys and grant the defendant's motion for a mistrial.

After reading this transcript and for the reasons stated by the majority opinion, by defense counsel, and by the prosecutor, I concur that defendant was denied his right to select a fair and impartial jury. I would reverse and remand for a new trial.

/s/ Peter D. O'Connell