

10-1-1960

Constitutional Law—Improper Remarks by Court Constituted Prejudicial Error

Buffalo Law Review

Follow this and additional works at: <https://digitalcommons.law.buffalo.edu/buffalolawreview>



Part of the [Constitutional Law Commons](#)

Recommended Citation

Buffalo Law Review, *Constitutional Law—Improper Remarks by Court Constituted Prejudicial Error*, 10 Buff. L. Rev. 94 (1960).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol10/iss1/24>

This The Court of Appeals Term is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

The effect of the decision is to further extend the right of individuals to appeal *in forma pauperis*.

IMPROPER REMARKS BY COURT CONSTITUTED PREJUDICIAL ERROR

A new trial was granted in *People v. Bai*²² on the grounds that judicial error in the trial court denied defendant of due process of law as guaranteed by the State²³ and Federal²⁴ Constitutions and the New York Code of Criminal Procedure.²⁵

Defendant had been convicted in Nassau County District Court for assault in the third degree,²⁶ and the conviction was affirmed by the County Court.

At his trial defendant appeared without counsel, his attorney having withdrawn from the case, and requested an adjournment. Since several previous requests had been made and granted for the same reason, the trial court denied a further extension. Defendant reluctantly proceeded to conduct his own defense, but disclaimed ability to examine twenty-seven witnesses he had subpoenaed. The trial judge construed this as an authorization to discharge them and accordingly did so.

Appellant contends the judgment should be reversed for two reasons. First, he was forced to stand trial without counsel and thereby deprived of a fair hearing and secondly, the trial judge improperly prevented him from examining a written statement of a witness for the prosecution which was in the possession of the authorities.

The Court of Appeals held as to the first contention, that from the facts of the case, defendant was given sufficient time to obtain an attorney. If he chose to appear without one as a result of his own inaction, he must be deemed to have waived his right to legal representation. To hold otherwise would give the accused the complete power to block every prosecution by this method. This is in accord with settled New York law.²⁷

The Court did feel, however, that the trial judge was without authority in dismissing the witnesses subpoenaed by the defendant. Nowhere in the record did the defendant request them either to remain or to be discharged, but simply indicated that he was unable to conduct a proper examination. Since a trial was to be conducted, it was defendant's right to have his witnesses present.

The Court also held that it was error for the trial judge to mention an appeal in the presence of the jury. The judge had stated "if you buy this record on an appeal, every one of those words will cost you more." The fact that there was an endeavor to correct this statement in the charge was not

22. 7 N.Y.2d 152, 196 N.Y.S.2d 87 (1959).

23. N.Y. Const. Art. I, § 6.

24. U.S. Const. Amend. XIV.

25. N.Y. Code Crim. Proc. § 415.

26. N.Y. Penal Law § 244(1).

27. *People v. Hildebrandt*, 308 N.Y. 397, 126 N.E.2d 377 (1955).

enough. "The court's impression of the defendant's guilt stood out so strongly that formal instructions could not cure the damages."²⁸

On these grounds, the Court stated that the conviction should be reversed. As to defendant's second contention, the Court held that since there is to be a new trial, he should be allowed to examine the written statement which he had requested. In *People v. Walsh*²⁹ the Court stated that where a witness testified to having made a written statement, and inspection by the presiding judge reveals contradictory matter, its use for cross examination on the question of credibility should be allowed.

The conviction was reversed and a new trial ordered with a lone dissent by Judge Desmond on the ground that none of the matters discussed in the majority opinion raised any substantial question of law.

EXCESSIVELY LONG JURY TRIAL NOT A DENIAL OF DUE PROCESS

The question of whether an excessively long jury trial constitutes a denial of due process has not been previously decided in the courts of New York State. In general the requirement of due process is met if the defendant is accorded a fair trial, conducted according to the law of the land.³⁰ A denial of due process has been defined as the failure to observe that fundamental fairness essential to the very concept of justice.³¹

The Court of Appeals in *People v. Clemente*³² decided for the first time that the length of a trial is not an essential element in determining whether due process of law has been satisfied. In this case the jury trial lasted for 14 months, and the Court of Appeals held that the trial may not be condemned as a denial of due process solely because it lasted for 14 months. The test to determine whether due process has been denied is whether under all the circumstances the defendants have been accorded a fair trial. The Court also indicated that it is the responsibility of defense counsel to object to the introduction of cumulative evidence which prolongs the trial unnecessarily, and that when defense counsel fails in this respect, it must share responsibility for the length of the trial. The Court of Appeals affirmed the judgments of conviction of the Appellate Division.³³

The argument of the defense in the instant case, that because the trial was so lengthy and frequently interrupted (the trial was discontinued during the summer months) and because the evidence and testimony were so overwhelming in quantity, the jury could not reach a reasoned verdict, is rejected by the Court of Appeals. To say that a long and complicated trial renders it impossible for a jury to reach a just verdict would be to cast doubt on the

28. *People v. Velleman*, 247 App. Div. 172, 286 N.Y. Supp. 918 (1st Dep't 1936).

29. 262 N.Y. 140, 186 N.E. 422 (1933).

30. *People v. Dunn*, 157 N.Y. 528, 52 N.E. 572 (1899).

31. *People v. Leyra*, 302 N.Y. 353, 98 N.E.2d 553 (1951).

32. 8 N.Y.2d 1, 200 N.Y.S.2d 625 (1960).

33. *People v. Clemente*, 9 A.D.2d 548, 190 N.Y.S.2d 831 (2d Dep't 1959).