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JUROR MISCONDUCT REVISITED

by Ted Babbitt

The Supreme Court of Florida in Roberts v. Tejada, 814 So. 2d 334 (Fla. 2002) laid down the test necessary to overturn a jury verdict based upon alleged misconduct of a juror in failing to disclose relevant information. This author wrote a prior article in this Bulletin on November, 2005, analyzing that case and others. In Roberts, the Court set forth a three-part test for establishing when a verdict should be overturned on the basis of juror misconduct. That test requires that the party complaining of the misconduct show that the concealed information was relevant to the juror's service, that it was concealed by the juror and that the complaining party acted with appropriate diligence in attempting to uncover the concealed information during voir dire.

Notwithstanding Roberts, it remains popular to attempt to overturn an adverse verdict by conducting an investigation post-trial to uncover concealed facts that would justify the granting of a new trial based upon juror misconduct. A recent advance sheet contained two cases with diametrically opposed results concerning this issue.

In Pereda v. Parajon, 32 Fla. L. Weekly D812 (Fla. 3rd DCA, March 28, 2007) a not guilty verdict for a defendant in a civil case was the subject of an appeal by the co-defendant and the plaintiff on the basis that a juror had failed to reveal that she had been involved in prior personal injury litigation. Post-trial it was discovered that the juror, who was a lawyer, had not only been involved in a

prior automobile accident but had claimed an injury and had hired a lawyer to pursue the claim which ended in a settlement with the adverse party's insurance carrier. The trial court denied a motion for new trial and the Third District reversed.

Reviewing the three prong test of Roberts, the District Court found that having a prior personal injury claim was clearly relevant and material to juror inquiry in a case which itself involved an alleged personal injury. The Court further found that in light of the fact that the juror was, herself, a lawyer and that questions were clearly put to her which required her to reveal her litigation history that the second prong of the Roberts test was also satisfied. The Court was careful to point out at Page 813 that:

“We need not, however, make a credibility determination because whether or not her concealment was intentional is of no import, since the courts have emphasized numerous times that, ‘a juror’s nondisclosure need not be intentional to constitute concealment,’ because the impact remains the same, the counsel is prevented from making an informed judgment regarding the composition of the jury and the utilization of his or her peremptory challenges.’ *Taylor v. Magana*, 911 So. 2d 1263, 1268 (Fla. 4th DCA 2005) (quoting *Roberts*, 814 So. 2d at 343 – 344); *see also Wilson*, 944 So. 2d at 430.

On the third prong of the Roberts test, the Court found that counsel had done what was required in asking voir dire questions in such a way that the relevant information was clearly asked for and should have been disclosed.

In Companiononi v. City of Tampa, 32 Fla. L. Weekly D840 (Fla. 2nd DCA, March 30, 2007), the trial court granted a new trial to the defendant in a personal injury action when it was revealed post-verdict that two members of the jury were not qualified to serve because they had previously been convicted of felonies and had not had their civil rights restored. The trial judge had, himself, qualified the jurors and in his order specifically found, as a matter of fact, that the jurors had been asked whether they had been convicted of a felony and had answered the question in the negative. The Second District reviewed a number of cases on the issue of whether prejudice was necessary in order to warrant a new trial where a juror fails to reveal lack of qualifications to serve on a jury. The Court relied on State v. Rodgers, 347 So. 2d 610 (Fla. 1977), in which an underage juror lied about her age and the Fourth District, in Rodgers v. State, 338 So. 2d 1121, 1122 (Fla. 4th DCA 1976) found as a matter of law that that was sufficient to justify a new trial without a finding of prejudice. The Supreme Court reversed the Fourth District finding:

“We are of the opinion that the seating of an unqualified or disqualified juror will not result in a reversal of a guilty verdict in the absence of a showing that such qualification deficiency affected the verdict or prevented a fair trial.” Rodgers, supra, at Page 611.

The District Court in Companiononi, supra, concluded that while it might be argued that jurors convicted of a felony had an inherent bias in a criminal case, that argument fails with reference to a civil case. The Court cited Ex parte Sullivan, 19 So. 2d 611 (Fla. 1944) in which a deputy sheriff was seated despite

his lack of qualifications for being in such an employment and Leach v. State, 132 So. 2d 329 (Fla. 1961) in which a non-registered voter was permitted to be seated. In both cases, the jurors' lack of qualification did not justify a new trial without some showing of prejudice.

It is possible to reconcile these seemingly contradictory opinions. The heart of the inquiry on juror misconduct is whether a party has been denied the ability to have a fair trial. A mere lack of statutory qualification to sit as a juror does not equate to presumed bias or inherent prejudice. On the other hand, failing to disclose a history of litigation similar to the facts of the case being tried leads to the inevitable conclusion that there was likely a motive, conscious or unconscious, on the part of the juror to want to serve on a jury to result in a verdict for or against one of the parties. The lesson to be learned by these two cases is that the existence of juror misconduct alone is clearly not sufficient to automatically result in the overturning of a verdict and the granting of a new trial. The Roberts test must be utilized to determine the extent of likely prejudice and the existence of prejudice must be established to overturn a verdict on the basis of a juror's lack of initial qualifications to serve.

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