

Monday, January 4, 2010

[Trial Court's Denial of a Motion for Mistrial Constituted Abuse of Discretion](#)

“We conclude that the case before us presents one of those rare instances in which the denial of the motion for mistrial constituted an abuse of discretion.”

In an opinion filed last week, the Court of Special Appeals vacated a defendant’s conviction for retaliation against a witness and remanded the case for a new trial. The court’s decision recognizes the severe prejudice a defendant must endure when facts about the defendant’s criminal history are elicited to a jury. The opinion in *Parker v. State*, No. 1351, September Term, 2006. (Filed November 30, 2009) is available [here](#).

The defendant was on trial for the crime of retaliation against a witness. He was convicted by a jury in Washington County, Maryland, and appealed. On appeal, he argued that the trial court erred by refusing to grant a mistrial. Here’s what happened at trial:

Prior to trial, defense counsel (who if I remember correctly was Brian Hutchison or Steve Musselman from the OPD) made a motion in limine to prevent the state from inquiring into the nature of the defendant’s previous “legal proceedings” (the defendant had been convicted of a drug conspiracy). The court granted the motion. Later, the state attempted to cross-examine the defendant on the nature of his prior criminal contacts. The court denied the state’s request.

During the state’s cross-examination of the defendant, this exchange took place:

Q: In fact, Detective Dunkle had investigated you, isn’t that true?

A: That’s correct.

Q: And that investigation led to you being convicted, isn’t that right?

Defense counsel promptly objected and moved for a mistrial. The objection was sustained, but the motion for a mistrial and request to approach the bench to argue the motion were denied.

The Court of Special Appeals held: the defendant’s “request for a mistrial was plainly stated, and the court’s refusal to permit counsel to approach the bench to argue the motion in greater detail effectively denied the motion.”

The Court specifically noted that the reference to the defendant’s prior conviction was an isolated statement intentionally made by the prosecutor despite the trial judge’s instructions and rulings on defense counsel’s motions in limine. In addition, although no curative instruction was requested, the prosecutor “making the reference was person of significant influence in the case.” Because the bulk of the jury’s findings would hinge on the defendant’s credibility, the court held that it could not “conclude beyond a reasonable doubt that the prosecutor’s reference to a prior conviction did not in any way unfairly influence the verdict.”

(This opinion is also notable for the court’s holding that a prosecutor’s cross-examination of a defendant using the “so the other witnesses are lying?” technique is not permitted. This is

because these questions ask the defendant-witness to “stand in place of the jury by resolving contested facts.”)

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