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High court sets some limits for trial judges Timothy P. O'Neill

One of my pet peeves involves trial judges who insist on telling you "Counsel, this is MY courtroom and in MY courtroom you will do things MY way."

You want to remind these judges that the courtrooms are NOT theirs. The Circuit Court belongs to the people of the State of Illinois. The judges are important employees, but employees nevertheless.

Which is not to say that a judge does not have a good deal of discretion in running a courtroom. Issues concerning continuances, admission of evidence, and most motions in limine are just a few of the areas where a trial judge's decision is given a great deal of discretion by appellate courts. It is rare for an appellate court to interfere with these kinds of decisions.

Rare, but not impossible. In the last few months, the Illinois Supreme Court reversed not one, but three cases, after finding that trial judges either abused their discretion or erroneously refused to exercise it. These cases provide important lessons on the limits of judicial power in a trial courtroom. *People v. Patrick*, 2009 Ill. LEXIS 173 (Jan. 23); *People v. Walker*, 2009 Ill. LEXIS 179 (Jan. 23); *Burnette v. Terrell*, 2009 Ill. LEXIS 307 (March 19).

People v. Patrick consisted of two consolidated cases. Both concerned defendants filing motions in limine to prevent the state from impeaching them with prior convictions. In the first case, Patrick filed his motion before his first degree murder trial; the judge's pretrial ruling would have helped him decide whether or not to testify on his own behalf.

The trial judge, however, refused to rule. He told Patrick that it was his regular practice never to rule on such motions until after the defendant testified. After Patrick testified, the judge then denied his motion and allowed the state to impeach him with three prior convictions for possession of a controlled substance. The jury then convicted him of second degree murder.

Patrick claimed the trial judge erred by refusing to rule on his motion until after he testified. The Supreme Court began its opinion by stating that it would evaluate the judge's decision under the "abuse of discretion" standard. An abuse is found "only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court."

Under this standard, the court found that the judge in *Patrick* abused his discretion through his blanket policy of refusing to rule on such motions unless a defendant first testified.

The court held that a trial judge's failure to rule on such a motion when he has sufficient information to rule is an abuse of discretion per se. Moreover, the trial judge's refusal to rule "substantially prejudiced" Patrick by forcing him to decide whether to testify without knowing whether he would be impeached.



Criminal Procedure

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Thus, the judge's automatic refusal to consider the facts of Patrick's case was both an abuse of discretion and reversible error. (In a consolidated case, the court ruled 5-2 that a defendant could not adequately preserve this issue of the trial judge's refusal to rule on such a motion unless the defendant actually took the stand and testified.)

Patrick will have a profound impact. In fact, it has already resulted in reversals of convictions. See, e.g., *People v. Hogan*, 2009 Ill. App. LEXIS 110 (March 11).

The second case, *People v. Walker*, concerned whether a trial judge abused his discretion in denying a defense request for a continuance. An assistant public defender had taken over the double murder case in question and had agreed with the prosecutor on a trial date. On the day the case was called for trial, the defense attorney told the court that she had mistakenly thought the case was up for the following week. She said she had been on trial in another courtroom for the past few days and that she was not ready to go to trial.

The judge responded: "It is irrelevant. There isn't a private attorney in the business who hasn't tried to pull something like this." When the defense attorney reminded the judge that she had not been the original counsel in the case, the judge simply said "I know, but it is a dirty shame." A bench trial ensued and the judge found Walker guilty of one count of first-degree murder and one count of second-degree murder.

Defendant contended that the court abused its discretion in denying the motion for continuance. The Supreme Court agreed: "We hold that the record clearly establishes that the circuit court completely failed to exercise discretion ... as it is devoid of evidence showing that the [judge] considered any of the relevant factors in denying the continuance.... [T]he [judge] mechanically denied the continuance without engaging in thoughtful consideration of the specific facts."

The court went on to criticize the circuit court for "completely abdicat[ing] its responsibility to conduct an informed deliberation of [the continuance] motion." The court concluded that there is no exercise of discretion when a judge "reflexively, arbitrarily, and mechanically" denies a motion. Finding the judge's actions to be plain error, the Supreme Court reversed and remanded.

The third case, *Burnette v. Terrell*, concerned a trial judge who repeatedly removed a particular assistant public defender from representing defendants in his courtroom; the judge did this despite the fact that the public defender assigned that particular attorney to the judge's courtroom. The trial judge never found the assistant public defender to be in contempt, nor did the judge ever provide any specific reasons for his refusal to allow the attorney to represent clients in his courtroom.

Before the Illinois Supreme Court, the trial judge contended, inter alia, that he could take these actions because of his inherent authority to manage his courtroom and the court's calendar.

The Supreme Court rejected all of his arguments. It faulted the judge for articulating absolutely no reason for his refusal to appoint the assistant public defender in question. The court held that the trial judge had no inherent authority to arbitrarily countermand a decision by the public defender to assign a particular assistant public defender to a particular courtroom. The court held that if a trial judge has the need to remove an attorney for contempt or other cause, the judge must make a record of the factual basis of the decision that is sufficient for meaningful appellate review. In addition, in order to remove an attorney, there must be an actual nexus between the cause asserted and the representation of the particular client by that particular attorney.

These three cases send important messages to trial judges. Even in areas of the law which afford them the highest degree of deference, the Illinois Supreme Court will refuse to allow trial judges to arbitrarily deny — or arbitrarily refuse to decide — motions solely based on idiosyncratic "courtroom policy."

The Illinois Supreme Court should be commended for refusing to use the "abuse of discretion" standard merely to rubber-stamp trial judges' decisions.

Defense lawyers would be well advised to keep copies of these decisions handy for the next time a judge insists that he utilizes some blanket policy "Because it's MY courtroom, counsel — that's why!"

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