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“THE MISCHIEF OF UNCERTAINTY”: PENNSYLVANIA SUPREME COURT FINDS PRESUMPTION OF PREJUDICE WHERE COURT STAFFERS SUBSTITUTE JURORS WITHOUT TELLING ANYONE

In **Bruckshaw v. Frankford Hospital of the City of Philadelphia**, a majority of the Pennsylvania Supreme Court held that removal of a juror can only be done by a trial court on the record with notice to the parties, and for cause. If the trial court fails to do so, it is presumed to be prejudicial and constitutes reversible error.

Bruckshaw involved a medical malpractice case brought by the estate of a patient who died after heart valve replacement surgery. At the start of trial, jury selection yielded twenty jurors; twelve were to be principal jurors and eight were to be alternates. The parties and court officer were aware of which jurors belonged to each group, but the trial judge and jurors themselves were not. At the end of the five-week trial, the alternates were dismissed and jury deliberation began. When the jury returned with the verdict, Juror 12 did not return and had been replaced with Juror 20 by the court officer. What's more, this alternate juror had been elected as the foreman of the jury and signed the verdict sheet accordingly. The jury found for the Defendants by a vote of ten to two, and the jury was polled.

It was not until after the verdict that counsel for Plaintiff noticed Juror 20's signature as the foreperson and put two and two together that this juror had been one of the alternates. The trial court granted the appeal but held that because Juror 20 was “acceptable to all parties” as an alternate, Plaintiff could not now object that Juror 20 was on the final jury panel. In its decision, the trial court indicated there was confusion resulting from the use of a different courtroom and being unable to arrange the jury in sequential order.

The Superior Court affirmed, agreeing with the trial judge's reasoning that Juror 20 had been chosen as an acceptable alternate. The Court suggested that Plaintiff would have to prove there would have been a different result at trial had another alternate been selected instead of Juror 20.

The Supreme Court held the removal of a presumptively competent juror by the court officer without the court's knowledge or input and without notice to the parties was an abuse of discretion. In reaching this conclusion, the Supreme Court recognized that the decision to remove a juror because of inability to perform and to replace her with an alternate juror is within the sound discretion of the trial court. As recognized in **Commonwealth v. Saxton**, 353 A.2d 434, 435 (Pa. 1976), where there is no evidence to support the trial court's decision to remove a juror, the court has committed an abuse of discretion. The Supreme Court raised four main concerns with the trial court's actions. First, removal of Juror 12 was done by the court officer without any notice to the court. Thus, the court was unable to investigate whether Juror 12 was, in fact, unable to serve. Second, neither party had notice of the substitution and therefore the parties never had the opportunity to contest Juror 12's inability to serve. Third, Juror 12 was replaced arbitrarily with Juror 20 instead of the next alternate in line. The Court also recognized that parties often do not save their peremptory challenges for the last chosen alternate because there is only a slim chance that the last chosen alternate will deliberate with the jury. Fourth, there was no record upon which the Court could evaluate why the decision to call Juror 20 instead of the next in line alternate was made, since it was made by Court administrative personnel without telling anyone.

A majority of the Court held the error was presumed prejudicial, stating, "removal of a presumptively competent juror, by a court officer, without notice to the parties, and the substitution of the last alternate juror is so inimical to the integrity of our jury system that the presumption of prejudice arising therefrom is conclusive." The Court's decision rested heavily on the absence of a record regarding the decision, stating "[t]he mischief of uncertainty is what distinguishes this case from those where we have required a showing of prejudice."

Chief Justice Castille concurred with the majority, emphasizing that the error was attributable to the court only insofar as the court officer's actions are attributable to the trial judge. Justice Eakin wrote a concurring and dissenting opinion. He disagreed with the majority's conclusion that a showing of prejudice should not be required in the absence of a record. Justice Eakin urged that a hearing should have been held to explore the circumstances of the decision. To forgo a hearing would merely give incentive to the aggrieved party to maintain the "mischief of uncertainty."

– Jacqueline Genesis Lux

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Medical Professional Liability Group

Jacqueline Genesis Lux

215-825-7214 | jlux@wglaw.com

Samuel Hood Foreman

412-281-5813 | sforeman@wglaw.com

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