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Procedure - Is Accused "Present" at Trial While Testifying Under the Influence of Tranquilizers

Emeric Fischer
William & Mary Law School

PROCEDURE

Is Accused "Present" at Trial While Testifying Under The Influence of Tranquilizers?

The right of the accused to be present at his trial is so well settled[1] that it requires no discussion. It is not the principle that gives rise to difficulty but the interpretation and application thereof.

In *State* v. *Murphy*[2] defendant was convicted of murder in the first degree upon his own testimony which he gave under the influence of two tranquilizer pills given to him by the medical trustee of the jail, defendant being unaware of their effect. There was a reasonable possibility that the death sentence might not have been imposed by the jury[3] except for defendant's demeanor (casual, cool, and lackadaisical) caused by the drugs. *Held*, three judges dissenting, that a new trial should be granted because constitutionally the accused has the right to appear in front of the jury with his mental and physical faculties unfettered. A new trial is not required, however, in every criminal case, or even in every capital case, where the appearance of the defendant is marred by some mental or physical impairment, but each case must be decided on its merits.

The court based its decision on the very broad principle of the right of the defendant to a just trial. Specifically it relied on the state constitution which declares: "In criminal prosecutions the accused shall have the right to appear and defend *in person*"[4] [emphasis added], and on the interpretation thereof in *State* v. *Williams*[5] in which it was stated: "The right here

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[1] "A principle that pervades the entire law of criminal procedure is that after an indictment is found nothing shall be done except in the presence of the prisoner . . ." 14 AM. JUR. *Criminal Law* § 189 (1938) with numerous citations in support.

[2] 56 Wash.2d 761, 355 P.2d 323 (1960).

[3] "Murder in the first degree shall be punishable by imprisonment in the state penitentiary for life, unless the jury shall find that the punishment shall be death . . ." REV. CODE WASH. § 9.48.030 (1951). Note the vast difference between this statute and the normal penalty, namely, death penalty unless the jury recommends mercy.

[4] WASH. CONST. art. 1, § 22.

[5] 18 Wash. 47, 50 Pac. 580, 581 (1897).

declared is to appear with the use of not only his mental but physical faculties unfettered."[6]

That this right is an ancient one, steeped in common law, is witnessed by the prohibition against use of manacles, shackles, irons, or bonds on the prisoner when on trial.[7]

The determinative effect of the demeanor of a witness upon the outcome of a trial has been reiterated in numerous federal and state decisions, criminal as well as civil. In *Dyer* v. *MacDougall*,[8] a libel and slander case, it was stated: "It is true that the carriage, behavior, bearing, manner, and appearance of a witness—in short, his 'demeanor'—is a part of the evidence." Similarly, in the murder case of *Stewart* v. *United States*,[9] the court pronounced: "whenever a witness takes the stand, he necessarily puts the genuiness of his demeanor into issue."[10] In *Broadcast Music Inc.* v. *Havana Madrid Restaurant Corp.*,[11] the following expression is found: "[T]he demeanor of an orally-testifying witness is 'always assumed to be in evidence'. It is 'wordless language' . . . The witness' demeanor . . . may alone have 'impeached' him."

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[6] The court could also have relied on State v. Pryor, 67 Wash. 216, 121 Pac. 56 (1912) where it was declared that "not merely observance of naked forms of law, but a recognition and just appreciation of its principles is required in a fair trial."

[7] 39 L.R.A. 821 citing, *e.g.*, Faire v. State, 58 Ala. 74 (1877); People v. Harrington, 42 Cal. 165 (1871); State v. Smith, 11 Or. 205 (1883); Vaughan's Case, 5 How. St. Tr. 980 (1696); 3 COKE, INSTITUTES 34; 2 HALE, PLEAS OF THE CROWN, 219. *See generally*, AM. JUR. *Criminal Law* § 132 (1938). For explanation of reasons behind this principle see Annot., 75 A.L.R.2d 762 and 44 MINN. L. REV. 155 (1959) discussing State v. Coursolle, 255 Minn. 384, 97 N.W.2d 472 (1959).

[8] 201 F.2d 265, 268 (2d Cir. 1952).

[9] 366 U.S. 1 (1961).

[10] In the murder case of United States v. Proctor, 12 F.R.D. 359 (D.D.C. 1951), defendant probably would have been found guilty of a lesser crime than he was convicted of had he been able to testify to the truth. But since he was imposed upon by the stronger personality of his codefendant he had no control over his own mental faculties and refused to rebut the testimony of his codefendant against him. *Held:* that defendant had been deprived of a fair trial, and a new trial should be granted in the interest of justice. The Court cited FED. R. CRIM. P. 33 which states that if there is a reasonable probability that there has been a miscarriage of justice, motion for new trial should be granted.

[11] 175 F.2d 77 (2d Cir. 1949), an infringement of copyright case.

A well settled principle in the law of evidence is that a confession to be admissible must be voluntary, but a confession made under the influence of drugs does not make it *per se* an involuntary one. Confessions made under the influence of drugs have been held admissible where the drugs were administered by a police doctor as treatment for a narcotics addict,[12] where heroin had been self administered,[13] where the accused was under the influence of benzedrine,[14] and in numerous other drug and narcotics situations.[15] Confessions have been held inadmissible where the accused was under morphine derivative,[16] ill and under influence of narcotics and subjected to repeated interrogation,[17] wounded and under morphine,[18] and under "truth serum."[19]

There are no reported Virginia cases deciding the point at issue in the principal case, but constitutional[20] and statutory[21] guarantees similar to those outlined in the State of Washington Constitution[22] have been provided. In *Word* v. *Commonwealth*,[23] an unlawful gaming case, the court laid great emphasis on how the demeanor of the witness would affect a jury: "The credibility of the evidence, is not only a material, but the most if not the only material part of every case which depends on a question of fact. Of this credibility the jury alone are the judges; and they may form their opinions, not only on the characters of the witnesses as persons of truth, *but on their manner of giving testimony . . . and on a variety of other circum-*

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12 People v. Townsend, 11 Ill.2d 30, 141 N.E.2d 729 (1959).

13 People v. Waack, 100 Cal. App.2d 253, 223 P.2d 486 (1950).

14 Lightfoot v. Commonwealth, 310 Ky. 151, 219 S.W.2d 984 (1949).

15 23 C.J.S. *Criminal Law* § 828.

16 State v. Anderson, 247 Minn. 469, 78 N.W.2d 320 (1956), held that jury should have been given cautionary instructions as to weight they should attach to such confession.

17 Edwardson v. State, 255 Ala. 246, 51 So.2d 233 (1951).

18 State v. Graffam, 202 La. 869, 13 So.2d 249 (1943).

19 People v. Heirens, 4 Ill.2d 131, 122 N.E.2d 231 (1954), *cert. denied*, 349 U.S. 947 (1954).

20 VA. CONST. § 8 reads: ". . . that in criminal presentations a man hath a right . . . to call for evidence in his favor . . ."

21 VA. CODE ANN. § 19.1-240 (1950) (Replacement Volume 1960): "A person tried for felony shall be present during the trial."

22 *Supra*, note 4.

23 30 Va. (3 Leigh) 805 (1831).

stances which may be calculated to affect their judgment."[24] [emphasis added]. As to confessions made under the influence of drugs it was held in *Orange* v. *Commonwealth*[25] that a statement made by the accused while in the hospital but after the main effect of the drugs had worn off was admissible, but a subsequent statement made under effects of a "truth serum" was held not to be admissible. Other decisions[26] indicate the great stress laid on fair trials in Virginia.

The purpose of evidence is to establish true facts. The overwhelming weight of authority seems to hold the demeanor of a witness to be part of the evidence. Therefore only true or normal demeanor of a witness would reflect true evidence. The logical question arises as to the admissibility of an accused's testimony where his demeanor, being wholly out of his control, does not accurately reflect his true character, resulting in a verdict far harsher than might have resulted upon presentation of what might be termed "normal evidence." Such reasoning, if universally adopted, could lead to excessive appeals for new trials on the ground that the accused "was not himself" while on the stand. It is doubtful that the best interests of justice would be served by applying such a principle too liberally, except that in capital cases the punctilio of the rules of evidence ought to be applied. The *Murphy* decision, which seems to be unique,[27] was probably made because of the harshness of the jury sentence, the penalty of death being wholly within their discretion.[28]

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[24] *Id.* at 823.

[25] 191 Va. 423, 61 S.E.2d 267 (1950).

[26] *E.g.*, Harrison v. Commonwealth, 183 Va. 394, 32 S.E.2d 136 (1944), a murder case, held "One accused of crime is entitled to a scrupulously fair and impartial trial, and nothing should be done or permitted to prejudice his case, or to obscure in the minds of the jurors the question whether the evidence justifies them in a conclusion that he is guilty of the offense charged."; Gilland v. Commonwealth, 184 Va. 223, 35 S.E.2d 213 (1945), a receiving stolen goods case, stated, "A fair trial is had when an accused has been tried by an impartial jury and a verdict of guilt is found upon credible evidence which demonstrates that his guilt has been proven beyond the peradventure of a doubt, and there has been no bending or breaking of his constitutional rights."; Bell v. Kenney, 181 Va. 24, 23 S.E.2d 781 (1943), auto accident case, said, "In determining the credibility of a witness, the jury considers his entire testimony, *his demeanor while on the stand* . . ." [Emphasis added].

[27] There are no other cases reported exactly in point either prior to or after this decision.

[28] *Supra,* note 3.