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*Johnson v. State:***Defense Attorney's Arrest for Contempt of Court in the Presence of the Jury Was Prejudicial and Denied Defendant the Right to a Fair and Impartial Trial**

By Walter W. Green

In a case of first impression, the Court of Appeals of Maryland held that under the totality of the circumstances, the trial judge's continuous interruptions, rulings on phantom objections, and arrest of defense counsel in the presence of the jury, constituted extreme prejudice and violated the defendant's right to a fair and impartial trial. *Johnson v. State*, 352 Md. 374, 722 A.2d 873 (1999). The court determined that judges should not express their personal views in front of the jury because of the likelihood of a harmful effect on the defendant's rights.

John Howard Johnson ("Johnson") was indicted and tried in the Circuit Court for Baltimore City for first degree murder, unlawful use of a handgun in the commission of a felony, illegally wearing and carrying a handgun, and kidnaping. *Id.* at 376, 722 A.2d at 874. Throughout Johnson's trial, the judge and Johnson's defense attorney had heated disputes. *Id.* During opening statements, the judge interrupted defense counsel and threatened him with contempt in front of the jury. *Id.* at 376-77, 722 A.2d at 874. While defense counsel was examining a state's witness, the judge began interfering with the questioning. *Id.* at 378-79, 722 A.2d at 875. When defense counsel asked the judge to stop, the judge had him arrested for contempt of court in front of the jury.

Id. Once the trial resumed, the judge sustained objections never made by the State's Attorney. *Id.* at 380-81, 722 A.2d at 876. At one point, the trial judge accused defense counsel of stealing a court room marker used to identify evidence. *Id.* at 382, 722 A.2d at 876-77. The trial judge held defense counsel in contempt again, this time outside the presence of the jury, and once the trial resumed defense counsel requested a mistrial. *Id.* at 383, 722 A.2d at 877. The judge denied the motion for mistrial, and defense counsel informed the judge that Johnson was on trial and that the judge's conduct was interfering with Johnson's right to a fair trial. *Id.* at 383-84, 722 A.2d at 877.

The jury convicted Johnson of involuntary manslaughter, illegally wearing and carrying a handgun, and kidnaping. Johnson did not file a timely appeal and, therefore, his first appeal was denied. *Id.* at 376, 722 A.2d at 874. Johnson was granted post-conviction relief in the form of a belated second appeal. *Id.* The court of special appeals affirmed his convictions. *Id.* The Court of Appeals of Maryland granted certiorari to determine whether Johnson was denied the right to a fair and impartial trial as a result of the trial judge's conduct in front of the jury. *Id.*

The court of appeals, noting that a criminal defendant's right to a fair

and impartial trial is a fundamental right, guaranteed in all criminal cases, stated that an essential component to a fair trial is an impartial judge. *Id.* at 385, 722 A.2d at 878 (citing *Johnson-El v. State*, 330 Md. at 105-06, 622 A.2d at 740-41 (1993)). The court confirmed that judges are held to the highest standard of conduct because of their distinguished position. *Id.* (citing *Johnson-El*, 330 Md. at 105-06, 622 A.2d at 740-41). A judge's conduct has a direct effect on whether a defendant receives a fair trial because the judge's opinions will usually impact the jury's verdict. *Id.* (citing *Johnson-El*, 330 Md. at 105-06, 622 A.2d at 740-41.) The court concluded that a judge should be impartial at all times and should not show his or her feelings in front of a jury. *Id.* at 386, 722 A.2d at 878 (citing *Apple v. State*, 190 Md. 661, 670, 59 A.2d 509, 513 (1948)).

The court recognized, however, that a trial judge is allowed discretion in his or her remarks during trial, as long as those remarks do not impair the defendant's right to a fair trial. *Id.* at 386-87, 722 A.2d at 879 (citing *Bryant v. State*, 207 Md. 565, 585, 115 A.2d 502, 511 (1955)). A judge who conducts a trial in an "impatient and brusque way" does not impair a defendant's right to a fair trial. *Id.* (quoting *Bryant*, 207 Md. at 585, 115 A.2d at 511). The court held

that to obtain a reversal of his conviction, a defendant must make “some clear showing that the judge’s statements influenced the jury against” him. *Id.* (quoting *Bryant*, 207 Md. at 585, 115 A.2d at 511).

In the instant case, the court of appeals took issue with defense counsel’s arrest for contempt of court in the presence of the jury. *Id.* at 387, 722 A.2d at 879. Without having before addressed the impact of defense counsel’s arrest on a defendant’s right to a fair trial, the court of appeals looked to *Suggs v. State*, 87 Md. App. 250, 257, 589 A.2d 551, 554-55 (1991), where the Court of Special Appeals of Maryland, applying a totality of the circumstances test, held that the arrest of an attorney in the presence of the jury, coupled with the judge’s poor jury instruction, was so prejudicial that it denied the defendant the right to a fair trial. *Id.* at 387-88, 722 A.2d at 879.

The court of appeals also examined case law from other jurisdictions which had ruled that the arrest of defense counsel in the presence of the jury denied the defendant the right to a fair trial. *Id.* at 389-90, 722 A.2d 880 (citing *Ash v. State*, 225 P.2d 816, 819 (Okla. 1950); *Meek v. State*, 930 P.2d 1104, 1109 (Nev. 1996)). The court of appeals noted that “judges have the sovereign power to punish, to deprive persons of their liberty and property, and that alone requires that they restrain their irritation.” *Id.* at 389, 722 A.2d at 880 (quoting *Scott v. State*, 110 Md. App. 464, 489, 677 A.2d 1078, 1090 (1996)). The court

concluded that the trial judge’s continuous attack on defense counsel denied the defendant a fair and impartial trial. *Id.* at 389, 393-94, 722 A.2d at 880, 882.

In addition to the trial judge’s ordering the arrest of defense counsel, the court of appeals also considered the effect of the trial judge’s other conduct impacting the defendant’s right to a fair trial. The court was specifically concerned with the interruptions, rulings on phantom objections, and answering of questions before allowing witnesses to answer. *Id.* at 390-91, 722 A.2d at 881. Although the court had not ruled upon the effect of a trial judge’s conduct on a defendant’s right to a fair trial, the court noted that in *Spencer v. State*, 76 Md. App. 71, 543 A.2d 851 (1988), the court of special appeals, applying a totality of the circumstances test, held that the trial judge’s accusation in the presence of the jury that defense counsel had lied to the court was reversible error because it impaired the defendant’s right to a fair trial. *Id.* at 391, 722 A.2d 881.

Additionally, other jurisdictions have ruled upon the effect of a trial judge’s conduct on the defendant’s right to a fair and impartial trial. *Id.* For example, a trial judge’s continuous interruptions and insinuations in front of the jury that defense counsel had been drinking was prejudicial to the defendant and constituted reversible error. *Id.* at 391-92, 722 A.2d at 881 (citing *Earl v. Wilson*, 904 P.2d 1029, 1033-34 (Nev. 1995)). Moreover, trial judges who verbally abuse lawyers and state their personal

views in the presence of the jury, “destroy the balance of judicial impartiality necessary for a fair hearing.” *Id.* at 392, 722 A.2d at 881 (quoting *People v. Wilson*, 174 N.W.2d 914, 915-16 (Mich. 1969)). Applying this reasoning to the instant case, the court of appeals held that under the totality of the circumstances, the trial judge’s conduct denied the defendant his right to a fair and impartial trial.

The holding in *Johnson v. State* stands for the proposition that although the defense counsel and trial judge may have personal differences, the judge should recognize that the position he or she holds is of such importance to our society that those personal differences must be put aside during trial. The Court of Appeals of Maryland is reminding trial judges that the defendant, not defense counsel, is the one on trial, and that a judge’s personal feelings toward defense counsel should not interfere with the defendant’s guaranteed right to a fair and impartial trial.