

MiamiHerald.com 

Posted on Sun, Feb. 01, 2009

Curious jurors raise legal questions for criminal trials

BY TODD WRIGHT

A Miami-Dade man on trial for shooting his wife to death took the witness stand and testified he was too drunk at the time to truly know what he was doing.

The jury wasn't buying it.

Asked one juror: So if you had been sober, would you have had better aim?

Bada-boom!

The verdict: guilty.

From mundane to comic to surprisingly salient, juror questions have become wild cards in South Florida courtrooms over the past year, since statewide rule changes gave jurors the right to question witnesses during civil trials.

A handful of judges also allow the practice during criminal trials.

"Some of the questions can come out of left field," acknowledged Miami-Dade Judge Circuit David Miller, who recounted the drunk vs. sober shooting anecdote from one of his criminal cases. But the flip side, Miller said, is that "sometimes jurors ask questions the attorneys didn't even think to ask."

When it comes to resolving lawsuits, some judges say juror participation can lead to better verdicts.

"The object is to give the jury all the information to make the decisions," Broward Judge Ron Rothschild said. "Just like a reporter and lawyers have questions, so do jurors. The better they understand what has been told to them, perhaps the better the verdict."

But many judges who handle criminal cases are reluctant to allow juror questions in trials where the verdict implicates not just money -- but potentially life and death.

'BOX OF PROBLEMS'

"It's a Pandora's box of problems," said Brian Cavanagh, Broward's chief homicide prosecutor. "There is a real and present danger that I think everyone is aware of when jurors start asking questions," because they aren't aware of rules of evidence that dictate what can and cannot be asked of witnesses.

Though some Miami-Dade and Broward judges had already been permitting jury questions during civil trials, the practice became mandatory in 2008 when the Florida Supreme Court adopted new rules mandating that jurors be allowed to take notes and ask questions in civil cases. The change did not apply to criminal trials.

The process was easy to implement.

After each witness testifies, the judge asks jurors if they have questions. If so, the questions are written on individual sheets of paper and given only to the judge, who determines -- with input from attorneys for both sides -- if the inquiry is allowable.

Then the witness is brought back to the stand and required to answer the approved questions.

The questions can give valuable insight into what jurors feel is important during the trial, Broward civil attorney Andrew Yaffa said.

"It's a whole new wild card that exists in every case," he said. "A good lawyer has to pay attention to what the jury is asking."

Aside from the occasional silly question -- "When is lunch?" or "How many more witnesses are left?" -- giving jurors a chance to vet a witness is a helpful tool, Judge Rothschild said. It allows them to clarify an answer or a sequence of events that was confusing, he said.

The most tangible difference has been that trials last a little longer. The veteran civil judge said he has had trials in which a witness spent hours fielding jury questions.

Once, Rothschild had to send his bailiff running down the hall to catch a witness because the jury had still more questions.

MIXED REVIEWS

Tom Gamba, a veteran Miami-Dade civil attorney, gave mixed reviews of juror questions, noting that even if a judge disallows a question, the query still gives opposing counsel a window into the juror's thinking that they otherwise would not have had.

Some of the questions are comical.

"I actually had a trial where the jurors thought one of the defense counsel was being very monotonous and lengthy in his cross-examination," Gamba recalled. "Their question was, 'How much is Mr. So-and-So getting paid, and is he paid by the hour?'"

The implications of an inappropriate question -- even if asked outside the earshot of fellow jurors -- would become amplified in a criminal trial, where a curious juror could reveal a hidden prejudice that might provide grounds for a mistrial, Cavanagh said.

Criminal judges have the discretion to allow questions, which rarely happens.

Jurors might be curious, for instance, why the defendant chose not to testify or wonder about the person's criminal record, but such questions are not permissible, Cavanagh said.

"There are so many areas we can't touch that they don't know about that can cause a mistrial," Cavanagh said. "I think the criminal judges will take a cautious step back before diving head first into this."

Judges also have to be wary of jurors and the "CSI effect," Miami-Dade Circuit Judge Stanford Blake said.

Blake, chief of the criminal division, said jurors who are allowed to ask questions might confuse their roles, believing they can shift from finders of fact presented in the courtroom to detectives and interrogators.

"Some of them can get caught up in asking questions to prove their own theory about what happened, instead of listening to the evidence presented to them by lawyers," he said. "It's like they have been watching too many crime shows."

That was the argument by attorneys in another case in Miller's courtroom involving a man who was accused of setting a woman on fire.

Defense attorneys claimed the man tripped and accidentally dumped a can of gasoline he was carrying in his arms on his girlfriend.

As he tripped, the lit cigarette in his mouth fell on the woman, igniting the fire, he told the jury.

POINTED QUESTION

A convincing story, perhaps -- until one alert juror asked to check the man's arms for burn marks. There were none.

He was convicted, Miller said.

"For the most part, the questions are on point and I think it helps the whole process," Miller said.

Since recently being reassigned from the civil to criminal division, "Lawyers have already been asking if I am going to allow questions," Miller said. ``You bet."

Miami Herald staff writer Susannah Nesmith contributed to this report.

© 2009 Miami Herald Media Company. All Rights Reserved.
<http://www.miamiherald.com>