SUSAN B. v. CITY OF CHICAGO

United States District Court for the Northern District of Illinois Eastern Division
November 22, 1983
No. 83 C 228

Reporter: 1983 U.S. Dist. LEXIS 11437
SUSAN B., Plaintiff, v. CITY OF CHICAGO, Defendant.

Opinion by: [*1] SHADUR

Opinion

MEMORANDUM ORDER

On the City of Chicago's motion in limine, filed immediately before trial, [1] this Court has ordered on November 15, 1983 that until the return of the verdict in Levka v. City of Chicago, No. 83 C 2283 (and possibly thereafter if the conditions causing entry of this order were to continue to require it, but in no event beyond November 30):

1. The jury's verdict in this case shall be sealed.

2. Neither the attorneys nor the parties shall discuss the verdict with any media representative.

3. Jurors shall not discuss the case and the verdict either with other members of the November 1983 jury panel of this District Court or with any media representative.

That order was based on this Court's determination that the current availability to the Levka jurors of information regarding the verdict in this case would pose a clear and present danger to the administration of justice, because of the immediacy of that trial, an estimated two- to three-day jury trial scheduled to begin before this Court November 16. It may be noted (though this order will not extend to their trial dates) that three other strip search cases are specifically set for November [*2] trial [2] and one or more of another three cases has or have some reasonable likelihood of November trial. [3]

All strip search cases are damages-only cases, with liability having previously been adjudicated against the City as a matter of law. It is a truism--but an important fact--that every litigated case is a separate one, with different facts, and that every litigant (plaintiff and defendant alike) is entitled to have her or its case tried on its own merits, without being affected (either favorably or adversely) by extraneous circumstances. What one jury may do in one case cannot be permitted, under our legal system, to influence another jury in another case.It is no accident that every set of jury instructions given in every [*3] case contains language much like the following: [4]

Anything you may have seen or heard about this case outside the courtroom is not evidence and must be entirely disregarded. You should not be influenced by sympathy, prejudice, fear or public opinion.

There is a special danger in the present circumstances--and it cuts both ways. As already stated, the motion here was the City's. But as it happened the factual circumstances affecting the plaintiff in this case were particularized and highly unusual, matters normally tending to increase the potential jury verdict. What the jury in fact returned was a verdict well below what another jury might reasonably have decided upon. [5]

It would be terribly unfair [*4] to the next plaintiff, who might or might not have less sympathetic facts to present to her jury (this Court had no knowledge of the particulars of the Levka claim when this order was entered orally), to suffer from a comparison because her jury knew of the earlier result in this case--just as the converse kind of unfairness to the City could have occurred had the verdict in this case been extraordinarily high. It is precisely that danger of an adverse and improper effect on the administration of justice--in both directions--that is both clear and present, and that can be avoided only by entry of the current order.

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[1] This order is being written to confirm the Court's oral ruling just before trial. It is being dictated after the one-day trial.

[2] Those cases are set before order judges of this District Court November 22 and 28 (two cases on the latter date).

[3] Those cases are part of the consolidated trial call before Judges Marshall, Moran, Hart and Shadur. Cases on that call are being assigned out as reached for trial between now and November 23.

[4] For convenience this language is taken from the Federal Criminal Jury Instructions of the Seventh Circuit, but its counterpart is found in every collection of jury instructions, criminal and civil alike.

[5] Nothing said here is intended to criticize the actual verdict. We make juries the triers of fact for good reason: They represent the collective voice and conscience of the community, though different juries may of course differ widely in their perceptions.

Were this case not cheek-by-jowl with the Levka case, it would be easy to resolve the issue by relying on the combination of (1) the normal attenuation of any untoward impact from trial publicity over even a short period of time and (2) the ability to eliminate, via voir dire inquiry in future strip search cases, the few prospective jurors that might have more retentive memories. [6] In that way any need for a restrictive order would be obviated. But here the admonition from Sheppard v. Maxwell, 384 U.S. 333, 362 (1966), quoted with approval in Nebraska Press Ass'n [*5] v. Stuart, 427 U.S. 539, 553 (1976), is directly implicated:

> Due process requires that the accused [here, both parties] receive a trial by an impartial jury free from outside influences.

See KPNX Broadcasting Co. v. Arizona Superior Court, 103 S.Ct. 584 (Rehnquist, J.).

This Court has the strongest aversion to orders that impinge even marginally on *First Amendment* rights. [7] Its determination of clear and present danger is not made lightly, but the special circumstances of this case have required it.

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[6] That reliance will apply to the other cases anticipated to be tried in November and thereafter.Accordingly this order is sharply restricted in time.

[7] Before appointment to the bench, this Court was successful counsel for plaintiffs in Chicago Council of Lawyers v. Bauer, 522 F.2d 242 (7th Cir. 1975), cert. denied, *427 U.S. 912 (1976)*, which held unconstitutional a rule of this District Court prohibiting lawyers' comment on pending cases on a less stringent standard than "clear and present danger." That was one of a substantial number of *First Amendment* cases in which this Court was involved as a lawyer--always in support of the exercise of the freedoms of speech and the press.