

Trial by Jury or Court?

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The focus of this issue of *The Coffee House* relates to the process of voir dire; but that issue is only relevant assuming that your client wishes to exercise his/her right to a jury trial. However, you must consider whether a jury trial is always the best avenue when approaching your case?

Wyoming Rule of Criminal Procedure 23 is entitled “Trial by Jury or Court.” Sometimes the very question that is posed within the title of that Rule can drastically change the outcome of your case.

For example, in a recent misdemeanor vehicular homicide case that I was tasked with trying, it was the decision to forgo a jury which was most likely the deciding factor in my particular trial. The fact scenario involved a young 40 year-old man—who is a husband, a father of three children, and a professional in the local community—who was driving his pick-up truck down highway 120 south headed toward Thermopolis, Wyoming. In the midst of his driving, he dropped a water bottle at his feet and bent over to retrieve the bottle before it became dangerously lodged underneath the pedals of his truck. Unfortunately, when he bent over to retrieve the water bottle at his feet, thus trying to make his driving safer for everyone around, he had inadvertently veered over the centerline just a few feet and collided with a motorcyclist. Sadly, the motorcyclist suffered severe injuries and died later that evening from the motor vehicle crash.

In the process of the discovery in the case, the State produced very vivid and very graphic photos and evidence of the deceased which it obtained from the autopsy report that the State was intending to use at trial. In response to the viewing of those graphic photos, motions were filed to prevent their introduction to a potential jury. However, the Court took the matter under advisement and would not rule upon the issue until it came up at trial.

Faced with the fact scenario described above, and the potential that a jury would see very vivid and graphic photos, my client and I spoke in great detail on whether a jury was really best suited to decide this particular case. Two questions came up

which are not unique to this particular criminal fact scenario.

First, the main issue in this case was a question of law. Did the description of the events in this case really constitute the “gross negligence” that is necessary to convict someone of vehicular homicide, or was I really a matter of “simple negligence?” That would be a very tough

question to articulate to a lay person on your jury who is not trained in law. Most of us hope that we can articulate that particular distinction between gross and simple negligence to a jury, but what if we are wrong? Knowing that the main issue for trial would be this fine distinction in law then maybe a judge trained in the law and with years of practical experience would be better suited to make this critical decision.

Second, with the reality that a Court might allow into evidence the graphic photos of the autopsy report, there was a very real chance that a jury could become inflamed. This reaction because of the death involved, meant they could easily overlook your well-articulated distinction between gross and simple negligence and decide to convict your client anyway because of the consequences of his actions, rather than his culpability.

In speaking with many of my peers about this case prior to trial, including a very well respected local district court judge, many believed the case should be tried to a jury. But, was that really the right decision to make? There were many factors that needed consideration with the client before a formal waiver of his right to a jury trial could be made. Those included the costs of a jury trial versus a bench trial, who was really best suited to decide the issues in the case, and what sort of evidence would a potential jury be forced to view.

Ultimately, after heavily weighing this decision the client decided to waive his right to a jury trial. However, per Wyo-



oming Rule of Civil Procedure the criminal defendant’s waiver of a jury trial is not the ultimate deciding factor. Remember that subparagraph (a) of that rule still requires that the State consent to the waiver and that the Court approve the waiver before it can proceed to a bench trial in a criminal case. Although most prosecutors and Courts prefer to save those additional costs to the State of Wyoming for holding a jury trial, it is still not automatic upon the waiver of that right by your client.

With the decisions to consent made a bench trial ensued, and after a day long trial the matter went to the Court for decision. That decision came back in favor of the Defendant in this case. Within the findings of the Court it made a very well-reasoned and articulate distinction between the differences in gross negligence and simple negligence when applied to the facts of this case. It seems the decision to waive a jury in this case was the right one. However, it was a bittersweet victory for all involved because it still failed to bring back the very life that was lost in this tragic event.

In conclusion, remember although the fact scenario may be different in your next criminal case it is always important to consider Wyoming Rule of Criminal Procedure 23, and those many factors that go along with it including who is best suited to make the right decision in your case—a jury or the Court? 🍷