CHAPTER 631

TRIAL; JUDGMENT, SENTENCE

631.01 ISSUES OF FACT; HOW TRIED; APPEARANCE IN PERSON.

Where, as in the instant case, the defendant knew that newspaper articles concerning the trial were read by jurors, and with such knowledge proceeded with the trial to a final conclusion without objection, he waived the right to object. State v Soltau, 212 M 20, 2 NW(2d) 155.

Following Connolly v Parks, 199 M 622, 273 NW 233, on the question of guilt or innocence under the provisions of the ordinance, the court properly refused to grant a jury trial. State v Hope, 212 M 319, 3 NW(2d) 499.

The federal courts do not receive evidence illegally obtained if timely motion is made for its suppression, but in reviewing the decisions of the state courts where confessions are challenged as involuntary, the Supreme Court of the United States applies the due process clause of the fourteenth amendment. State v Schabert, 218 M 5, 15 NW(2d) 585.

Subject to certain exceptions, evidence against the accused should be confined to the specific offense, and no evidence should be received as to his commission of other independent and disconnected acts, whether criminal or merely meretricious. (Certain exceptions classified, described and outlawed.) State v Haney, 219 M 518, 18 NW(2d) 315.

The court, without infringing the right of the accused to a public trial, may temporarily exclude part of the public from the trial for the preservation of order in the court room or of public morals, but the power of temporary and partial exclusion of the public must be exercised with extreme caution to insure that accused is not thereby deprived of the presence, aid, or counsel of any person whose presence might be of advantage to him, and to insure that he is not otherwise thereby prejudiced. State ex rel v Utecht, 221 M 145, 21 NW(2d) 328.

Evidence supports the finding that three defendants did not conspire, but each defendant will be held separately for his individual acts. Melin v Baker, 223 M 319, 27 NW(2d) 647; Fewell v Tappan, 223 M 483, 27 NW(2d) 649.

In a conspiracy case, much discretion is left to the trial court in its rulings on admission of evidence, and its rulings will be sustained on appeal, if the testimony admitted tends remotely to establish the ultimate fact. Phelps v United States, 160 F(2d) 860.

Voluntary absence of defendant constitutes waiver of the right to be present at rendition of verdict. 13 MLR 65.

Examination of jurors by trial judge. 13 MLR 258.

Waiver of jury trial by accused. 15 MLR 109.

Admissibility of expert testimony regarding results of the "lie detector" tests. 18 MLR 76.

Laws 1935, Chapters 194, 196. 20 MLR 70.

Exceptions to the hearsay rule. 21 MLR 181.

Some object lessons on publicity in criminal trials. 24 MLR 453.

Waiver of right to jury trial, absent advice of counsel. 27 MLR 533.

Compelling prisoner to wear prisoner clothing at trial. 31 MLR 374.

631.02 CONTINUANCE; DEFENDANT COMMITTED, WHEN.

The granting or refusal of a continuance rests in the sound discretion of the trial court, and the appellate court will not disturb the ruling except on a showing

of abuse of discretion. In the following cases the ruling of the trial court was sustained: State v Ingraham, 118 M 13, 136 NW 258; State v Brodt, 150 M 431, 185 NW 645; State v Swan, 151 M 215, 286 NW 581; United States v Kennedy, 45 F (2d) 433.

Right to "speedy trial". 7 MLR 575.

631.03 JOINT INDICTMENT, SEPARATE TRIAL.

Motion for severance is addressed to the discretion of the trial court, and the decision will not be disturbed in the absence of a showing of clear abuse. State v Sederstrom, 99 M 234, 109 NW 113; State v Townley, 145 M 5, 182 NW 773; Cochran v United States, 41 F(2d) 193; McDonald v United States, 89 F(2d) 128.

631.04 EXCLUDING MINORS; DUTY OF OFFICER; PENALTY.

Courts may temporarily exclude persons of immature years from court room without violating constitutional right to a public trial where evidence relates to indecent or immoral matters, or may temporarily exclude spectators for the purpose of alleviating embarrassment of a witness, especially one of immature years called upon to testify to matters of a disgusting and salacious character. State ex rel v Utecht, 221 M 145, 21 NW(2d) 328.

631.05 JUROR MAY TESTIFY, WHEN; VIEW.

Transcript of proceeding at view by jury. 28 MLR 201.

631.06 QUESTIONS OF LAW AND FACT, HOW DECIDED.

In prosecutions for homicide, testimony of physicians as to manner in which a mortal wound was probably inflicted and as to the kind of weapon used is competent; and its weight and the credibility of witnesses is for the jury determined by the same rules used in determining the weight of other evidence. State v Gorman, 219 M 162, 17 NW(2d) 42.

The credibility of witnesses and the weight given to their testimony is for the jury. Seebach v United States, 262 F 885; Neal v United States, 114 F(2d) 1000; Firotto v United States, 124 F(2d) 532.

Power of court to direct verdict of conviction. 11 MLR 663.

Constitutionality of statute giving jury in criminal case right to determine law as well as fact. 15 MLR 830.

631.07 ORDER OF ARGUMENT.

It was error for the prosecuting attorney to tell the jury which witnesses he believed or did not believe, and to call the defendant a hoodlum, but as no objection or exception was made by the attorney for the defendant, the circumstances do not warrant a new trial. State v Palmer, 206 M 185, 288 NW 160; State v Cook, 212 M 495, 4 NW(2d) 323; State v Gorman, 219 M 162, 17 NW(2d) 42.

The state is not permitted by means of insinuation or innuendo of incompetent and improper questions to plant in the minds of the jurors a prejudicial belief in the existence of evidence which is otherwise not admissible and thereby prevent the defendant from having a fair trial. State v Haney, 219 M 518, 18 NW(2d) 315.

Misconduct of the prosecuting attorney in leading the complaining witness to testify that defendant's insurer paid the damages to his car did not constitute prejudicial error, since the court promptly sustained the objection, and experienced counsel for defendant made no motion to strike the answer nor request that the jury be instructed to disregard it. State v Murray, 223 M 297, 26 NW(2d) 364.

631.08 CHARGE OF COURT.

There can be no reversal in a criminal case for alleged misconduct of the prosecuting attorney in making his opening statement to the jury without a record

of the statement claimed to be prejudicial. The omission by the trial court to give certain instructions where no instructions were offered by appellant or exceptions taken to those given at the time of the trial does not make a new trial necessary. State v Lemke, 207 M 35, 290 NW 307.

Absent a request, it is not reversible error to neglect to give the following precautionary instructions: (1) As to the weight of the testimony of a witness previously convicted of crime; (2) that the weight of the evidence is not to be determined solely by the number of witnesses; and, (3) as to the necessity of corroboration of accomplices and the weight of their testimony. State v Soltau, 212 M 20, 2 NW(2d) 155.

In a prosecution for abortion. the testimony of the woman upon whom the abortion was performed or attempted need not be corroborated. In the instant case, the evidence justified a finding of guilty or not guilty of abortion, but not an attempt to commit abortion, and it was not error to refuse to submit to the jury, under section 610.11, the question whether defendant was guilty of an attempt. State v Tennyson, 212 M 158, 2 NW(2d) 833.

The court did not err in refusing to give defendant's requested instructions 5 and 5½ because there was no evidence in the record from which the jury could find the facts or infer facts to which the requested instructions could be applied, and instructions 6 and 7, so far as correct, were covered by the general charge. State v Cook, 212 M 495, 4 NW(2d) 323.

Discretion of the court regarding additional instructions. 1 MLR 277.

Charge as to guilt of prisoner. 5 MLR 231.

Right of trial judge to comment on evidence in charge to jury in civil and criminal cases. 18 MLR 441, 451.

631.09 JURY; HOW AND WHERE KEPT WHILE DELIBERATING; SEPARATE ACCOMMODATIONS FOR WOMEN JURORS.

Where evidence is conflicting as to whether there was improper communcition between the bailiff and the jury, the fact is to be determined by the court in the exercise of sound discretion. State v Soltau, 212 M 21, 2 NW(2d) 165.

Articles in newspapers relative to alleged tampering with the jury was not in the instant case such as to be sufficiently prejudicial as to warrant reversal. Klose v United States, 49 F(2d) 177.

631.10 WHAT PAPERS MAY GO TO JURY ROOM.

In prosecution for illegal sale of liquor it was not reversible error to permit the exhibits consisting of liquor or apparent liquor containers to be taken, under certain restrictions, to the jury room. State v Olson, 95 M 104, 103 NW 727; State v Linquist, 110 M 12, 124 NW 215.

631.11 JURY MAY RETURN INTO COURT FOR INFORMATION.

Upon return of the jury for further information the judge stated: "Things have got to be looked at in a practical way of life, is this young man guilty or isn't he in your best judgment? There is no such thing as agreeing to disagree. It is up to me after you have been in there a sufficient length of time to then decide whether I should discharge you as a disagreed jury and call another jury to try the case over, that is for me, no one else, and I haven't decided that you have deliberated long enough, so kindly go back to the jury room." Such instruction was not ground for reversal. State v Henspeter, 199 M 359, 271 NW 700, State v Siebke, 216 M 181, 18 NW(2d) 186.

Where, after the jury has retired, it returns for further instructions on a point and the trial court states the substance of the instruction given on the point, but refuses to reread it, there is no error. State v Bolsinger, 221 M 154, 21 NW(2d) 483.

631.12 DISCHARGE OF JURY WITHOUT VERDICT.

An accused is "put in jeopardy of punishment," in the legal and constitutional sense, when a jury is impaneled and sworn to try his case, upon a valid indictment; and in a prosecution for felony, the defendant, unless he has waived that right, is entitled to be present if and when the jury is discharged. State v Sommers, 60 M 90, 61 NW 907.

If through the misconduct of a juror or any person the jury panel has become tainted with corruption, coercion, or intimidation, a mistrial should be ordered. Klose v United States, 49 F(2d) 177.

Reassembly of jury after discharge and separation to amend or correct the verdict. 21 MLR 868.

631.13 SECOND TRIAL.

New trial for errors of law occurring at the trial. 5 MLR 152.

631.14 VERDICT FOR LESSER OFFENSE.

Degree of proximity of overt acts necessary to constitute attempt. 12 MLR 658.

Assault with specific intent; distinction between such an assault and an attempt. 21 MLR 213.

Effect of impossibility of success upon the existence of a criminal attempt. 25 MLR 796.

631.17 RECEPTION OF VERDICT.

Following State v Talcott, 178 M 564, 227 NW 893, an affidavit that one of the jurors stated that she did not vote for a verdict of conviction or believe in defendant's guilt and that she thought that when the verdict was returned the foreman would state that she had not voted for it, could not be used to impeach the verdict. State v Bresky, 213 M 323, 6 NW(2d) 464.

Effect of recommendation of leniency accompanying verdict of guilt. 24 MLR 421.

631.18 INSANITY OF DEFENDANT.

Massachusetts procedure relative to sanity of defendants in criminal cases. 19 MLR 308.

631.19 ACQUITTAL ON GROUND OF INSANITY; COMMITMENT; RELEASE.

Criminal irresponsibility on ground of insanity. 17 MLR 630.

631.20 HEARING ON PUNISHMENT.

See, L. 1947, c. 243, coded as section 610.37.

The court has power to postpone the matter of imposing sentence to a subsequent term or to extend a term of court for the purpose of imposing sentence; but, except where otherwise provided by statute, where the court has imposed a valid sentence it cannot change or modify such sentence after the expiration of the term at which it was imposed. State v Carlsen, 178 M 626, 228 NW 173.

Power to suspend a criminal sentence for an indefinite period or during good behaviour. 6 MLR 363, 375.

Effect of omission of allocution. 22 MLR 733.

631.21 DISMISSAL OF CAUSE; RECORD OF REASONS FOR.

A county attorney has no authority to file a written dismissal with the clerk of the district court without making an application to the court and without the

court making an order stating reasons for the dismissal. See, State v Cooper, 147 M 272, 276, and State v Kiewel, 166 M 302.

The county attorney may move the court to dismiss an indictment where the indictment for murder was found more than 20 years ago, and all witnesses are either dead or cannot be located. Where the person charged appears by an attorney, the defendant need not appear personally. OAG April 14, 1947 (133-A).

Right to speedy trial; dismissal as bar to further prosecution. 7 MLR 588.

Informations and indictments. 8 MLR 379, 404.

CHALLENGING JURORS

631.26 CHALLENGE TO INDIVIDUAL JUROR.

Examination of prospective jurors on voir dire. 17 MLR 299.

631.30 PARTICULAR CAUSES OF CHALLENGE.

Where the defendant knows facts which might disqualify a juror, but permits the juror to serve without objection, he thereby waives his privilege of challenge. State v Lilja, 155 M 251, 193 NW 178; State v Remen, 160 M 527, 200 NW 803.

Right to examine prospective juror as to membership in Ku Klux Klan. 9 MLR 686.

Examination of prospective jurors on voir dire. 17 MLR 299.

631.31 CAUSES OF CHALLENGE FOR IMPLIED BIAS.

A juror was asked whether he was acquainted with any of the attorneys in the case. He answered, no. He was a nominal party to a suit which the attorney for the defendant tried six years before. They did not recognize one another until the trial was nearly over. The juror says he had no prejudice or feeling of any sort in the matter. It does not appear that the defendant's rights were prejudiced. State v Chodos, 147 M 420, 180 NW 536.

631.33 EXEMPTION FROM JURY DUTY A PRIVILEGE.

Disqualification of governmental employees as jurors. 21 MLR 608.

631.35 TRIAL OF CHALLENGE; TRIERS; APPOINTMENTS; COMPENSATION.

Jury triers. 9 MLR 353.

631.36 CHALLENGED JUROR EXAMINED; EVIDENCE.

Examination of prospective jurors on voir dire. 17 MLR 299.

JUDGMENTS AND EXECUTION THEREOF

631.40 JUDGMENT ON CONVICTION; JUDGMENT ROLL.

It is only where the court pronounces a judgment in a criminal case which is not authorized by law, under the indictment, whether the trial has proceeded regularly or otherwise, that such judgment can be said to be void so as to require the discharge of the defendant upon habeas corpus. State ex rel v Brown, 149 M 297, 183 NW 669.

A judgment of conviction of the relator in a state court is not void under the provisions of 28 USCA, Section 465, because, at the time of the trial of the indictment resulting in the conviction, there was pending in the United States circuit court of appeals an appeal from an order of the United States district court dis-

charging a writ of habeas corpus issued upon the petition of the relator. State ex rel v Sullivan, 158 M 473, 198 NW 309.

Admissions made by an insured after he had transferred to plaintiffs all of his interest in fire insurance policies, covering certain property against loss by fire, are not admissible in evidence to establish the defense that the insured wilfully set fire to the property covered by the policies. Such evidence was properly excluded as hearsay, and as offending the rule that an assignor may not after the assignment disparage the title to the interests assigned. The judgment roll, entered upon the insured's plea of guilty to the charge of arson of the property insured, is not admissible in this action, to which the insured is not a party, to establish the defense pleaded, that he wilfully set fire to such property with a criminal purpose. True v Citizens Ins. Co. 187 M 636, 246 NW 474.

Error in admitting evidence as to the conviction of the driver of defendant's truck of the crime of driving a motor vehicle while intoxicated, at the time of an accident, was not prejudicial where other evidence, not objected to, conclusively showed that the driver was intoxicated at the time. Mills v Harstead, 189 M 193, 248 NW 705.

Admissibility of criminal judgment in later civil actions to prove an issue of fact. 12 MLR 546.

631.42 FORM OF SENTENCE TO STATE PRISON.

A sentence for murder in the third degree to "imprisonment at hard labor in the state prison at Stillwater, Minnesota, according to law," when the statute required for such a crime a definite term of "not less than seven years or more than 30 years," is void. The sentence being wholly void, the defendant is remanded to the district court of Ramsey county for imposition of a lawful sentence nunc pro tunc. State ex rel v Reed, 138 M 465, 468, 163 NW 984, 985.

Service of a sentence does not begin until defendant is in custody under that sentence; and where sentences run concurrently he must serve until all have terminated. Relator was sentenced to the reformatory, but execution of sentence was stayed and he was placed on probation. Later he was sentenced and committed to the reformatory for a subsequent crime. Thereupon the stay of the first sentence was revoked and a commitment thereon sent to the prison officials. Some 17 months later he was discharged from the second sentence by the board of parole. The first sentence remained in force. State ex rel v Vasaly, 177 M 338, 225 NW 154.

Where the sentence directed the sheriff to deliver the accused upon conviction to the state prison, and the sheriff delivered him to the custody of a representative of the prison, who was waiting at the county jail for culmination of the trial, under provisions of section 610.21, the delivery to such representative, who in turn delivered the accused to state prison, was sufficient compliance with sentence relative to comitment. State v Utecht, 221 M 138, 21 NW(2d) 240.

Where the prisoner was found guilty of the crime of assault in the first degree, on October 17, 1946, the execution of the sentence was stayed and the prisoner delivered to the Veterans' hospital for treatment. Upon his release from the hospital, the prisoner appeared before the court and was sentenced as for assault in the second degree. The court had not lost jurisdiction and the proceedings were regular. OAG July 7, 1947 (341-B).

When does sentence of imprisonment begin? 10 MLR 166.

631.43 SENTENCE WHEN PUNISHMENT NOT PRESCRIBED.

A sentence of six years and six months is not cruel, unusual, or repugnant under provisions of section 631.43; neither is it excessive as a sentence for accepting bribes while a member of the city council. State v Durnam, 73 M 150, 75 NW 1127.

Increase of sentence; judicial discretion; review of sentence by appellate court. 7 MLR 349.

631.48 PENALTY MAY INCLUDE COSTS OF PROSECUTION.

Accused who was convicted of wilfully attempting to evade income taxes and also was required to pay costs of prosecution was not chargeable with jury fees, jury mileage, jury bailiff fees, jury meals, and lodging, professional services rendered by a physician, marshal's fees, and judge's traveling and maintenance expenses. Gleckman v United States, 80 F(2d) 394.