

No. 25213    Roy Young & Sons Paving, Inc. v. John L. Ash, et al.

Starcher, J. , dissenting:

In a very short period of time, a courtroom bailiff develops a remarkably close relationship with a jury. The bailiff wears a uniform and is an authority figure. The bailiff is an officer of the court. The bailiff shepherds the jurors through a novel and even somewhat frightening process. The bailiff occasionally brings food to the jury and often delivers personal messages for jurors. The jury must rely on and trust the bailiff.

This trust inescapably affects how jurors would view a bailiff's testimony. Simply stated, a jury is likely to give undue weight to "their" bailiff's testimony. Moreover, as an officer of the court, having a bailiff testify is indeed somewhat akin to having the judge testify.

The trial judge in the instant case should have refused the request to have the bailiff testify. Or, if justice required the bailiff's testimony, the judge should have declared a mistrial and allowed the bailiff to testify at a retrial, with someone else serving as bailiff.

The final result in this case may have been right, but we will never know that with any certainty, because the appellant certainly did not receive a fair trial.

Accordingly, I respectfully dissent.