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NOT GUILTY IS VERDICT IN HAGGERTY VICE CASE

T-P 1/27/70
Judge Haggerty Waves after Being Cleared



SHOWING ELATION after being found not guilty Monday night on charges of obscenity, soliciting for prostitution and resisting arrest in connection with a Dec. 17 vice raid at the

—Photo by the Associated Press.
de Ville Motel is Criminal District Court Judge Edward A. Haggerty Jr. as he leaves his trial after learning the verdict.

Acquitted Jurist Mum,
But 'Very Happy'

By JOHN B. COTTER
and DON HUGHES

Criminal District Court Judge Edward A. Haggerty Jr. was found not guilty Monday night of charges of obscenity, soliciting for prostitution and resisting arrest.

His fellow judge, Matthew S. Braniff, delivered the "not guilty" verdict shortly before 10 p.m. following a full day of testimony. The trial began and ended Monday.

Following his acquittal, Judge Haggerty said he had told his attorney, Richard J. Zibilich, that he was "not going to make a statement."

"I may have one tomorrow," said Judge Haggerty who would add only that he was "very happy."

Judge Haggerty and 13 others had been arrested Dec. 17 in a vice raid on an alleged stag party at the de Ville Motel, 3800 Tulane.

In ruling on the obscenity charge, Judge Braniff said, "The court finds that a private party in a motel room rented by an individual who invited friends is the same as if the party was given in his home."

He continued that the state's right to limit obscenity does not extend to the mere possession of obscene material by a person in the privacy of his home.

In ruling on the charge of so-

In ruling on the charge of soliciting for prostitution, Judge Braniff said that there was only one remark allegedly made by the defendant which could possibly be construed as soliciting for prostitution and that statement was reported only by the police undercover agent.

That agent, Brewer F. Pence, Judge Braniff said, has a son, Det. Robert M. Pence, on the vice squad of the New Orleans Police Department and therefore had an interest in securing a conviction for his son.

NOT SUFFICIENT

Judge Braniff added that Brewer Pence was an informer by law and that his testimony "was not sufficient to convince me beyond reasonable doubt."

In ruling on the charge of resisting arrest, Judge Braniff said the police "invaded what constituted the home of another without a search warrant" and proceeded to make arrests that were not legal.

Judge Haggerty, therefore, had the right to resist arrest, said Judge Braniff. He added that based on news film taken at the time of the arrest the court found Judge Haggerty did not resist arrest "because he was unable to" with four police officers holding him and forcing his face to the floor.

John Volz, assistant district attorney for Orleans Parish, who led the prosecution, said the state has no further plans concerning Judge Haggerty. The state has no appeal.

The state had suffered a major setback in its case earlier Monday when Judge Braniff refused to accept into evidence a film projector, seized stag films and an electronic transmitting device.

Judge Braniff's ruling Monday afternoon on a defense motion for suppression of that evidence followed his Monday morning ruling when he refused to allow testimony

from an electronic bugging device into evidence.

The state had sought acceptance of evidence received via an electronic transmitter placed on Brewer Pence.

Judge Braniff said he refused to accept the projector, films and recorder "for the simple reason of *Matt vs. Ohio*," a basic U.S. Supreme Court decision on illegal search and seizure.

Judge Braniff said police had had seven hours to prepare an application for a writ of search and seizure the day of Judge Haggerty's arrest at the alleged stag show and had not done so.

FOUR POINTS

In submitting his motion for suppression of the projector, film and recorder, defense attorney Robert Zibilich argued four main points. They were:

1. The search of the motel room where the stag show was alleged to have taken place was not conducted with a warrant.
2. No misdemeanor was performed in the presence of a police officer.
3. The officers conducting the search of the motel room after the 14 arrests did not have warrants.
4. The evidence received via

the transmitter was not admissible and the police then did not have probable cause to enter the motel room and make arrests.

John Volz, assistant district attorney for Orleans Parish, had argued that the evidence should be admitted based on two major arguments. They were:

1. The arresting and searching officers did not need a search warrant because they had probable cause to enter the motel room and that the property seized thereafter was the result of a subsequent incidental search.

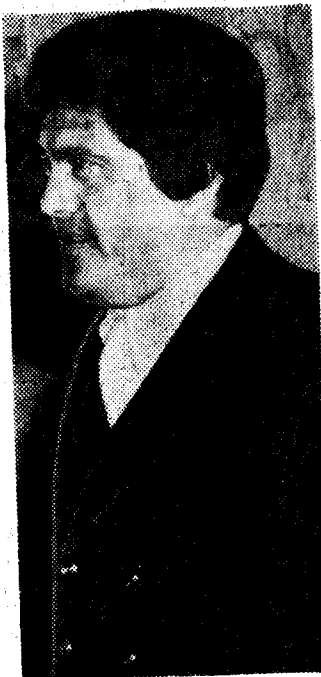
2. The result of surveillance of the motel room offered probable cause for search and arrest when viewed in the light of information received from the police informer prior to his entry into the motel room.

Following Judge Braniff's ruling on the film, projector and recording device, Volz immediately entered an objection.

Earlier he had moved for a stay so that the state could appeal Braniff's decision on the bugging evidence to the Louisiana Supreme Court.

Judge Braniff said that the higher court has previously refused to interrupt a trial to make such a ruling, and added that the Haggerty trial would

The 56-year-old, grey-haired Haggerty was arrested the night of Dec. 17 at what police



—Photo by The Times-Picayune.
MANUEL SOTO
Mentioned in trial testimony.

continue until he is ordered by the Supreme Court to make a postponement.

Volz argued that Braniff's decision "goes to the heart of the state's case," meaning that it would detrimentally affect the state's chances of obtaining a conviction.

allege was a "stag show" in rooms 149 and 150 of the De Ville.

Haggerty was booked at Central Lockup later that night with soliciting for prostitution, resisting arrest and obscenity, all misdemeanors.

Haggerty had received international attention early last year when he presided at the trial of Clay L. Shaw, who was later found innocent of conspiring to murder President John F. Kennedy.

The high point of Mon-

day's proceedings came with the testimony of Pence, 1443 Arabella, a retired military man who said he was working as an unpaid undercover agent for the New Orleans Police the night of the motel raid.

Afternoon proceedings consisted of testimony from police officers who took part in the raid and subsequent arrests. The trial was still in progress late Monday afternoon.

Pence, who said he receives a 90 per cent disability from the government due to a service-connected physical condition, was the first witness called by the state. He told of being in the motel room that night, of seeing a series of pornographic films which Haggerty himself had brought, and of three women brought by Haggerty allegedly for the purpose of prostitution.

NO WARRANTS

As the trial began, Volz confirmed that the state had obtained no search or arrest warrants prior to the motel raid.

At 10:20 a.m., 20 minutes later, Ed Planer, news director for WDSU-TV, was called to the stand. He verified to the court that he had brought news film shot as Haggerty was being subdued by police at the motel, and a projector and screen with which to show the film. However, the film had not been shown by early Monday night.

Pence, wearing a dark suit and a red, white and blue tie, began his testimony immediately after Planer left the stand. Haggerty, clad in a black suit, sat at the defendant's table nervously chain-smoking cigarettes.

Pence said that he had previously aided the Vice Squad on gambling cases when the young-

er Vice Squadsmen were unsuccessful in being allowed into bookie joints to place bets. He said they felt an older man would have better luck at obtaining evidence against bookies, and therefore, he was chosen for this undercover assignment.

Pence pointed out that his son, Det. Robert M. Pence, is a member of the Vice Squad who also participated in the raid, and said it was his son who asked him to take this assignment.

Asked by Volz to chronologically relate the happenings of Dec. 17, the elder Pence told the following story:

He said that about 2:10 p.m.

that day he met with Manuel Soto, 39, 926 E. William David Pkwy. in the De Ville lounge and gave Soto \$5 which he understood was to be his admission fee to a stag party that night. Soto told him that the \$5 would cover "movies and the real thing."

NAME ON LIST

Soto then gave the \$5 to Henry Smith, the lounge bartender, who in turn placed the money in an envelope and put Pence's name on a list. He was then told by Soto to return at 6 p.m.

Pence said he returned about 5:50 p.m. and met with Soto in the lounge. The two stood around for about 15 minutes, when the motel manager, identified as "Zarza," approached and said, "Let's get the party started."

He said the men then went to Room 149 and entered. When they walked in, Pence said, he saw a king-sized bed with a projector set up atop the headboard, an empty reel on the projector.

At that point, Volz displayed a movie projector which Pence said looked exactly like the one used in the motel room.

Continuing, Pence said that he then realized that the party was to occupy two rooms — 149 and 150, which were separated only by a sliding partition which at that time was pushed back against the wall so that both rooms were visible.

On the sink, he added, was a box containing liquor and paper cups, next to large tub of ice. Soft drinks were soon brought in as mixers. Several of the other men had arrived in the room by this time, he said.

THREE BAGS

Pence said that the manager arrived shortly thereafter with three white paper bags, each containing a roll of movie film on white reels.

Asst. DA Volz then produced as evidence three white paper bags and three white movie reels which Pence said looked the same as those at the party.

Zarza then gave the film to "Max," the projectionist, said Pence. It was a short time later that Haggerty entered the room carrying a brown paper bag, which he also gave to Max, who in turn placed it next to the projector.

He said the film reels Haggerty brought were all dark, as compared with the other reels

that were white.

Volz then produced a brown paper bag which Pence said was "just like the one" the defendant brought in. Pence said the film reels Volz took from the bag also looked like those Haggerty had brought.

Pence said that on Dec. 19, two days after the raid, he had viewed a screening of the confiscated films in the Vice Squad office, and that they were the same ones shown at the motel.

Continuing, Pence said that after a while the motel manager went up to Haggerty and told him that "Pat O'Brien," who was in charge of the "girlie committee," had fallen down

on his job and there would be no girls at the party.

"That's just like Pat O'Brien. He defends all the girls of the street then can't get one to a party," Pence quoted Haggerty as saying to Zarza.

Pence said Haggerty then left the room, saying that he would be back.

UNDER COLLAR

Referring to earlier that day, Pence said that before going back to the motel that night he was given the electronic transmitter by Sgt. Robert N. Frey, Vice Squad commander. The device was placed under his shirt collar, with the battery and microphone placed in his back pocket. He was then driven to within one block of the motel in a police vehicle.

Returning to the events of that night, Pence said that Haggerty returned to the room some 30-40 minutes after he had left. In his company was a man and three women.

"Look what I brought to live up the party," he quoted Haggerty as saying. Haggerty then began introducing the women to the men already present. When they approached Soto, Haggerty allegedly said to the women, "Girls, treat this man nice—he's our bookie."

Pence then identified photos given him by Volz as the three



—Photo by The Times-Picayune.

BREWER F. PENCE

Police informer testifies.

women who entered with Haggerty. They are Janelle Vincent, 21; Jean Clemens Shipp, 32, and Wanda Norman, 39.

Pence then said Haggerty remarked, "Maybe Pat can't get the girls, but I can. If we need more, I can get them too."

Max, the projectionist, then said, "Put the damn lights out and let's get started," quoted Pence.

A man identified as Max A. Williams, 36, 1931 Farmington Pl., Gretna, was one of the 13 others arrested along with Haggerty.

Then followed a vivid description of each of five pornographic films allegedly shown.

Pence said the first showed two women performing different sexual acts with each other, with the second showing two women and a man.

A WAY OUT

Following the showing of the second film, Pence said, Haggerty asked the motel manager if there was a second way out of the room. "If the cops come I've got to have a way out of here," Haggerty was quoted as saying. "Even the FBI leaves a way out."

Pence said that during this whole time he was seated very close to Haggerty. He said Haggerty was on a couch and he was on a chair next to the couch, so close that the two men were using the same table on which to place their drink glasses.

After the manager had assured Haggerty that there was an alternate way out, the third

film began, showing one man and one woman. The fourth movie showed "about four girls and three or four men" performing sex acts on one bed, Pence added.

After this film had been screened, Pence continued, Haggerty asked, "who's going to be the first to go with the girls?" Asked by someone how much this would cost, Haggerty allegedly replied, "Oh, about \$100 apiece." However, one of the women said that it may not be "quite that much," said Pence.

The fifth and last film shown had two women doing sex acts. As that reel ended, Pence quoted Haggerty as asking the group, "Why go on with films when we have the real thing here?"

EXTRA MONEY

At that time Haggerty and Zarza had a discussion, which ended when Haggerty announced that the manager wanted extra money if the "real thing" were to happen.

Haggerty, while arguing with Zarza, asked, "Who in the hell brought these girls here? I ought to be able to say how much they cost." Pence then said the men were told it would cost them \$10 more each.

After this money was paid, Pence continued, someone tried to open the door to Room 149 from the outside. Finding the door locked, the person then knocked on the door.

The manager then opened

the door to Room 150, and Haggerty commented that he knew one of the men outside — the one who gave him the films. "I don't care who they are, they will have to pay \$10," Pence quoted the manager as saying.

It was then that the police stormed into the room. Pence said the next thing he knew Haggerty was on the floor struggling with officers who were trying to handcuff him.

Pence said that he himself was handcuffed, for appearances sake, and taken from the room before anyone else.

Questioning of Pence was then begun by Robert Zibilich, defense attorney for Haggerty. In reply to questions by Zibilich, Pence said that he:

—Had not initialed the movie projector at the motel and could not swear that it was

the same one shown in the courtroom.

— Had not initialed the three white paper bags and that he noticed nothing unusual about the bags.

— Understood the \$5 fee paid to Soto was to see "movies and the real thing."

— Noticed no lettering on the brown paper bag that Haggerty brought, but Zibilich showed that the confiscated bag had "Laundry Bag" printed on one side. Pence said he must have seen the other side of the bag which bore no lettering.

— Had initialed the films shown him only after the Dec. 19 showing in Vice Squad offices.

TAKING IT HOME

Pence further testified that at the time of the party he asked Haggerty what he would do if he were stopped on the street with the films. He said Haggerty replied to him that he would say it was evidence and he was taking it home to study it.

Pence also repeated for defense questioning that he had seen officers trying to handcuff Haggerty but no one else, since he was the first to be taken from the room.

After a 10-minute recess, Judge Braniff asked Pence if the transmission through the bugging device had been recorded on tape. Pence said he did not know.

He also told the judge, in response to his question, that he had no order from a judge or magistrate to use a bugging device. He said he was asked to do this by his son and Sgt. Frey. Pence was then excused from the stand, with the understanding that he may be recalled for later testimony.

Later Monday following a dinner recess, the defense presented its witnesses to describe what they had seen and heard the night of the party.

Kenneth A. Reeves, 3009 20th St., Apt. B, the man for whom the bachelor party was allegedly given, testified the party was indeed a bachelor party to celebrate his marriage which was scheduled for and conducted on Dec. 27.

He said that he could not recall if the three women in attendance at the party had come with Judge Haggerty. He did say that the three women "were completely and fully clothed the entire time they were in the

room."

In response to questions from Volz, Reeves said that he knew everyone in the room except the three women and Pence. He further testified that he never saw a man on top of a woman on a bed.

Asked what the movies were about, he replied, "Quite frankly they were rather boring and I wasn't too interested." He said they were sex films.

Reeves was asked further by Volz, "Did you feel any activity was all right as long as it was in the name of your getting married?" He replied, "No."

Samuel L. Blanchard of Waveland, Miss., testified that the bachelor party for Reeves had been his idea and that he and friends had decided to charge \$5 to defray food and liquor expenses.

He said he never heard an offer of prostitution at the party and that he did not know whom the women came with to the party.

Asked by Volz why everyone had come to the party, Blanchard replied, "We just wanted some drinks and fellowship."

Malcolm G. Mundy Jr., an attorney, testified that he could not recall whom the women came with to the party.

He said the women were "totally clothed continuously" and that he never heard an offer of prostitution nor a request for an additional \$10 for live entertainment. He further said he never saw a man with a woman on a bed.

DOING HIS THING

Asked by Volz about the party, Mundy said, "Everyone was enjoying himself with the possible exception of the undercover agent. But I guess he was doing his thing, too."

Mundy said that he knew everyone at the party except the three women and Pence

who, he said, "got in as a Judas."

"He (Pence) said he was a lonely old man from Seattle," Mundy continued. "I wanted him out but I was overruled."

The second witness called by the prosecution was Sgt. George Hughes, deputy commander of the Vice Squad.

Volz showed Hughes an electronic transmitter which the officer identified as the one placed on Pence on Dec. 17. Sgt. Hughes said that he and Det. Richard Huth drove in

their unmarked police car to the rear of the De Ville Motel, but were unable to pick up any signal from the transmitter from that location.

VANTAGE POINT

Shortly before 8 p.m., Hughes continued, the two found that they could receive conversations from a vantage point on Tulane Ave. one block from the De Ville. He said he had testified in Haggerty's court on two or three previous occasions, and was familiar with his voice.

Asked if a recording had been made of the conversations being received from the bug, Sgt. Hughes said he tried to make a tape of it from an eight-volt tape recorder which was plugged into the police car's electrical system. However, he added, the car operated on a 12-volt system and the recorder started to smoke, so it was disconnected. He said no recording was obtained.

It was at this time that Volz asked Hughes to tell what he had heard over his receiver, but an objection from Zibilich was sustained because Judge Braniff had not yet ruled on the motion to suppress the bugging evidence.

Hughes was returned to the adjoining witness room while arguments proceeded between the defense and state on whether the bugging evidence should be allowed.

Judge Braniff read from several precedents set in previous court cases in which bugging had been an issue, and said that in the 1968 Omnibus Crime Act passed by Congress, the same cases he had referred to had been used in the congressional opinion. Also, Braniff said that there is no Louisiana state statute providing for the use of electronic devices in gathering evidence. He then ruled that the bugging evidence was inadmissible.

After the lunch recess and Judge Braniff's refusing to grant a stay to the prosecution, Det. Marion Seghers was called to the stand.

QUIZZES ON ROLE

Seghers was questioned at length by the prosecution about his role in the raid. He testified that he and Det. Paul Melancon had dropped Pence off near the motel and parked their car across the street at Tulane and S. Scott.

He reported seeing Haggerty leave the motel about 6:20 p. m. and walk to the Rowntowner Motor Inn at 3900 Tulane where he stayed until about 7:40 p. m.

before coming out with a man and three women.

The officer said the five walked back to the De Ville and entered Room 150. Two of the women walked back to the Rowntowner some 10-15 minutes later, and the third woman followed them five minutes later. Some 10 minutes later the three returned to the De Ville, said Seghers.

Seghers was followed on the stand by Ptn. James Crow and Melancon, each of whom told of their roles in the raid and accompanying arrests.

Seghers testified that he had known, through a confidential informant, on Dec. 13 of plans for the Dec. 17 party.

The night of the raid, he continued, he could see from his police car what "appeared to be movies" being shown in Room 150, by reason of a flickering light which could be seen through the window. He said he also had reason to believe an offense was being committed because of conversations over the police radio between Sgt. Frey, Sgt. Hughes and Det. Huth.

However, Judge Braniff said he could not testify on what he heard over his police radio because this information stemmed from what the other officers allegedly were hearing by means of the bugging device, and therefore this, too, was suppressed evidence.

Seghers said that at the time of the raid he saw Judge Haggerty struggling with other officers and being "uncooperative." Seghers then ordered that Haggerty be handcuffed for his own protection.

Uner questioning by Ziblich, Seghers said that he had no search or arrest warrant for Haggerty at the time of the raid, and that an arrest warrant was not made out until about 2 a.m. Dec. 18, several hours after the actual arrest.

COMMIT CRIME

He also testified that he had not seen Haggerty commit a crime during the raid, but had reason to believe that he was soliciting for prostitution when he was bringing the three wom-

en from the Rowntowner to the De Ville.

Ptn. Crow, called next by the prosecution, said he first saw Haggerty that night as he (Crow) was seated in the lobby of the De Ville.

Crow said that he followed when Haggerty walked to the Rowntowner, and saw Haggerty talking with a man and three women in the Rowntowner lounge. The officer then identified photos of the three women as those who had been arrested in the raid.

When Haggerty was introduced to the women in the lounge by the man, identified by Crow as "Kent Roulette," Roulette allegedly said to Haggerty, "Judge, these are the three girls I was telling you about." Crow said the five then left, walking in the direction of the De Ville. As they left, Crow was placing a telephone call to Sgt. Frey at police headquarters.

Crow said that later, during the raid, the persons in the room were yelling "police, police," and "looked panic stricken." He said he saw Haggerty "fighting and kicking" as officers were trying to keep him in the room.

Det. Melancon, called next to testify, said that it was he who placed Haggerty under arrest on an obscenity charge the night of Dec. 17. He said he first encountered Haggerty on the walkway outside Room 150 as the defendant was attempting to leave the room.

He quoted Haggerty as saying several times, "I wasn't in there, I wasn't in there."

Melancon said that he joined four other officers in subduing and handcuffing Haggerty. But the judge was not subdued, Melancon added, until Haggerty had struck him on the left side of his face.

Judge Haggerty, who has taken a leave from the bench pending the trial's outcome, is the second ranking Criminal District Court judge. It was the senior judge of that court, Bernard J. Bagert, who ordered Haggerty released on his own recognizance hours after Haggerty's arrest.

Other than the three women, Soto and Williams, others arrested in the motel room are:

Albert Miller, 27, 7915 Cohn;

Alceste Ory, 30, 1125 Phosphor, Metairie; Michael Carso, 50, 4422 Senator Toby, Jefferson Parish; Michael Stuebben, 27, 202 S. Hennessey, Haggerty's minute-clerk; attorney Malcolm Mundy Jr., 37, 6344 Dorothea; Samuel Blanchard, 39, 519 Beach Blvd., Waveland, Miss.; Kenneth Reeves, 29, 3009 20th St., Apt. B; and George Costello, 39, 2916 Haring Rd.