

# SUPREME COURT OF LOUISIANA

*No. 96-K-2227*

STATE OF LOUISIANA

Versus

SAMUEL LEE BANKS

LEMMON, J., Concurring

The trial judge erred in failing to instruct the jurors, after swearing them and releasing them for the evening, that they were to avoid media reports about the trial. Two of the jurors, as a result of the error, read the article which reported that defendant, who was on trial for soliciting sex with a fourteen-year-old basketball player on a team coached by defendant, had been arrested four months earlier "on multiple charges of molestation of juveniles and aggravated crimes against nature [involving victims who] were nine of Banks' students in New Orleans."

The information that the jurors read in the newspaper surely would have been inadmissible at trial. Indeed, if a court official had made a statement at trial containing such information, La. Code Crim. Proc. art. 770 would have mandated an automatic mistrial.

Nevertheless, at a hearing outside the presence of the other jurors, defense counsel questioned the allegedly tainted jurors only briefly, and each of the jurors swore that he could put the information from the newspaper out of his mind and decide the case solely on the evidence introduced at trial. While the newspaper information obviously was extremely prejudicial and unfavorable to defendant, the burden was on defendant to establish at the hearing that he could not obtain a fair trial. See La. Code Crim. Proc. art. 775. Although it is not far from doubt, I cannot say, on the brief record of this hearing that the trial judge abused his discretion in denying the motion for

mistrial.