

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JANICE FOSTER,

Defendant-Appellant.

UNPUBLISHED

May 30, 1997

No. 190213

Presque Isle Circuit Court

LC No. 94-091461-FH

Before: Bandstra, P.J., and Hoekstra and S.F. Cox*, JJ.

PER CURIAM.

Defendant appeals by right her conviction of resisting and obstructing a police officer, MCL 750.479; MSA 28.747. We reverse.

Defendant first argues that the trial court erroneously deemed that she had waived her right to counsel and erroneously allowed her trial to proceed with defendant representing herself in propria persona. We agree. In this case, the trial court failed to follow the provisions of MCR 6.005 before determining that defendant had waived her right to be represented by an attorney and would represent herself. Although defendant requested the discharge of her court-appointed counsel, she also indicated that she wanted new counsel to represent her. This was not an unequivocal request to represent herself. *People v Pruitt*, 28 Mich App 270, 272; 184 NW2d 292 (1970); see, also, *People v Gonzales*, 179 Mich App 477, 480; 446 NW2d 296 (1989). Without an unequivocal assertion of the desire to proceed in propria persona, the trial court should have required that defendant be represented by her appointed counsel, who the trial court determined was providing competent representation. *People v Adkins*, 452 Mich 702, 722, n 18; 551 NW2d 108 (1996); *People v Anderson*, 398 Mich 361, 367; 247 NW2d 857 (1976). Further, this defect was not cured by the presence or availability of standby counsel at trial. *People v Lane*, 453 Mich 132, 138; 551 NW2d 382 (1996); *People v Dennany*, 445 Mich 412, 446 (Griffin, J.), 454, n 3 (Cavanagh, C.J.); 519 NW2d 128 (1994).

* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant also argues that a new trial is warranted because she was not present when the trial court conducted an “orientation session” for the jury panel. Therefore, defendant argues, her right to conduct jury voir dire was undermined because she was precluded from becoming aware of any potential prejudice or “areas of concern.” We disagree. The trial court specifically noted that this orientation session was not related to defendant’s case. The orientation was conducted because it was the panel’s first appearance and only preceded defendant’s case because hers was the first case on the call. Where it is presumed that no prejudice flows to the defendant when the court communicates to a deliberating jury regarding matters wholly irrelevant to the case, it follows that no prejudice would flow in this case to defendant when the court likewise discussed matters irrelevant to defendant’s case in a jury orientation. *People v Gonzalez*, 197 Mich App 385, 402-403; 496 NW2d 312 (1992).

We reverse and remand for a new trial. We do not retain jurisdiction.

/s/ Richard A. Bandstra

/s/ Sean F. Cox