

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT MICHAEL VANVLEET,

Defendant-Appellant.

UNPUBLISHED

December 19, 1997

No. 193583

Calhoun Circuit Court

LC No. 95-002823 FH

Before: McDonald, P.J., and Wahls and J. R. Weber*, JJ.

PER CURIAM.

In a jury trial, defendant was convicted of felonious assault, MCL 750.82; MSA 28.277, fleeing and eluding MCL 750.479a; MSA 28.747(1), and malicious destruction of a building over \$100, MCL 750.380; MSA 28.612. On this appeal of right, defendant raises an issue which relates to the action of the trial judge in excluding defendant from the courtroom for ostensibly disruptive behavior.

As presented, the argument on defendant's behalf is lacking in merit. When a defendant is properly excluded from the courtroom during a criminal trial, arrangements to permit the defendant to follow the course of the trial using audio or audio-visual technology may have a pedagogic effect and convince the defendant to cease the disruptions and thereby regain the right to sit in the courtroom. See *People v Staffney*, 187 Mich App 660, 665; 468 NW2d 238 (1990). But, fundamentally, if the defendant has been properly excluded from the courtroom for disruptive behavior, the defendant has waived his Sixth Amendment right to confront witnesses and Fourteenth Amendment due process right to be present at critical stages of the proceedings, and arrangements to permit the defendant to follow the trial are not then constitutionally compelled. *Illinois v Allen*, 397 US 337, 357; 90 S Ct 1057; 25 L Ed 2d 353 (1970).

However, we sua sponte consider the more fundamental question of whether the exclusion of defendant from the courtroom in this case was justified, since otherwise a miscarriage of justice would occur. Under *Illinois v Allen*, *supra*, exclusion of the defendant from the courtroom for disruptive

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

behavior is constitutionally permissible only after the defendant has first been warned by the judge that he will be removed if he continues his disruptive behavior. 397 US at 343. Furthermore, the defendant's conduct must be "clearly of such an extreme and aggravated nature as to justify either his removal from the courtroom or his total physical restraint." 397 US at 346. Here, the record reveals only that defendant, in a manner which was neither disrespectful nor disruptive, was attempting to make a record both to convince the trial judge to exercise his discretion to appoint a new attorney for defendant and to permit this Court, in the event of an appeal, to determine whether the trial court abused its discretion if the requested relief were denied. *People v Charles O Williams*, 386 Mich 565; 194 NW2d 337 (1972). A defendant on trial has a right to make a record to preserve objections, as well as to obtain an informed ruling from the trial judge; when the defendant and his counsel are at odds, the defendant must be allowed to speak for himself to raise such questions. See *People v Ravitz*, 26 Mich App 263, 269-270; 182 NW2d 75 (1970). The record presented fails to justify the extraordinary action taken by the trial court in this case in excluding defendant from the courtroom. If defendant's tone of voice or physical demeanor, matters not shown by the record, warranted such action, it was the duty of the trial judge to clarify the record in this regard.

Reversed and remanded for new trial. We do not retain jurisdiction.

/s/ Gary R. McDonald

/s/ Myron H. Wahls

/s/ John R. Weber