

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEKOVAS JOHNSON,

Defendant-Appellant.

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UNPUBLISHED

July 21, 2000

No. 210699

Wayne Circuit Court

Criminal Division

LC No. 97-003614

Before: Murphy, P.J., and Collins and Owens, JJ.

PER CURIAM.

Defendant was convicted by a jury of assault with intent to rob while armed, MCL 750.89; MSA 28.284, felonious assault, MCL 750.82; MSA 28.277, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to concurrent terms of twelve to twenty years' imprisonment for the assault with intent to rob conviction and two to four years' imprisonment for the felonious assault conviction, and a consecutive two-year term for the felony-firearm conviction. Defendant appeals as of right. We reverse.

Defendant raises several issues, one of which we find dispositive. Defendant contends that the conduct of the trial judge deprived him of a fair trial. We agree.

A trial judge has wide, but not unlimited, discretion and power in the matter of trial conduct. *People v Paquette*, 214 Mich App 336, 340; 543 NW2d 342 (1995). If the judge's conduct pierces the veil of judicial impartiality, a defendant's conviction must be reversed. *People v Collier*, 168 Mich App 687, 698; 425 NW2d 118 (1988). While a judge may question witnesses in order to clarify testimony or elicit additional relevant information, the judge must avoid any invasion of the prosecutor's role and exercise caution so that his questions will not be intimidating, argumentative, prejudicial, unfair or partial. *People v Moore*, 161 Mich App 615, 616-617; 411 NW2d 797 (1987). The test is whether a judge's questions and comments may well have unjustifiably aroused suspicion in the mind of the jury as to a witness' credibility and whether partiality quite possibly could have influenced the jury to the detriment of the defendant's case. *Id.* at 617.

We find that on at least one occasion, the court improperly interfered with the questioning of a witness and invaded the prosecutor's role in a manner that suggested partiality and could have influenced the jury to the detriment of defendant's case. During the cross-examination of the police officer who took defendant's statement, the following colloquy occurred:

Q. [Defense counsel]: Judge, I only have one other question.

THE COURT: Sir, ask the question. Just talk about something that did happen in this case.

Q. [Defense counsel]: My last question hopefully. Are you saying that the accused directs you, gives you permission to write something? Is that what you're telling us?

THE COURT: Don't answer it. Irrelevant, incompetent, immaterial. He didn't say it happened in this instance. He did not say it happened in this instance.

Not only did the court interfere in the examination of the witness and improperly invade the prosecutor's role, the court's objection was without legal basis. The witness had in fact suggested that during his interrogation of defendant, defendant would have had to give him permission to write defendant's statement, and counsel was merely attempting to clarify that testimony. Moreover, cross-examination about defendant's statement was vitally important in this case, given defendant's position that the police had coerced him into making an inculpatory statement.

Further, in response to defense counsel's objection to the court's tone of voice while speaking to defendant, who was testifying, the court made reference to the case proceeding to the Court of Appeals, thereby suggesting that the judge believed that defendant would be found guilty.<sup>1</sup> This

<sup>1</sup> During cross-examination of defendant by the prosecutor, the following colloquy occurred:

[Defense counsel]: Excuse me, your Honor.

THE COURT: Yes, what is it, sir?

[Defense Counsel]: My objection really goes to the Court, inadvertently I assume, but, you know, my client—

THE COURT: What?

[Defense counsel]: Raised your voice at my client.

THE COURT: I'm a raise voice person, sir.

[Defense counsel]: Judge, I understand that.

THE COURT: Well, fine, sir. I'm not telling him to do anything wrong. I'm just telling him to realize-- Listen, I want to get this case over with, gentlemen.

(continued...)

comment may have unjustifiably aroused suspicion in the jury's mind about defendant's credibility and quite possibly influenced the jury to the detriment of defendant's case. *Moore*, supra at 617. We find, therefore, that reversal is warranted.

In light of our ruling on the foregoing issue, it is unnecessary to address defendant's remaining issues on appeal.

Reversed and remanded for a new trial before a different judge. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ Jeffrey G. Collins

/s/ Donald S. Owens

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(...continued)

[Defense counsel]: Judge, listen to yourself now, please.

THE COURT: I'm listening to myself and I'm listening to you too.

[Defense counsel]: Okay, okay.

THE COURT: Just want to get this case over.

[Defense counsel]: Okay.

THE COURT: You can scream all you want. Now you gonna cry. Sit down,  
[defense counsel].

[Defense counsel]: I need some water.

THE COURT: I can't believe this. Crying. Ask your question, sir. Let him get his water.

Sir, listen to the question. Answer the question that is asked of you, please, so we can get on with this case. Carry on, Mr. Prosecutor.

Now, I'm gonna tell you something, Ladies and Gentlemen, and I want you-- If you think that I am screaming and hollering, then you note it. Part of this, see, is to build this record so that when it goes to the Court of Appeals, if it ever gets there, gonna say well, Judge, you sat there screaming at my client. I don't believe I've talked to this man any different than I've talked to anyone else. If so, you tell me, have I? Have I talked to this man any different than I have? Well, that's my intent is not to talk to him any different than anybody else. Just get this over with.