

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

WILLIAM HENRY WALKER,

Defendant-Appellant.

UNPUBLISHED

July 12, 2002

No. 232035

Marquette Circuit Court

LC No. 99-36436-FH

Before: Griffin, P.J. and Hood and Sawyer, JJ.

HOOD, J., (dissenting in part)

I must respectfully dissent, as I agree with defendant that, under the circumstances, he was denied a fair trial

This Court reviews a trial court's decision to allow the restraint of a defendant during trial for an abuse of discretion under the totality of the circumstances. *People v Dixon*, 217 Mich App 400, 404-405; 552 NW2d 663 (1996).

Freedom from shackling is an essential component of a fair trial. *People v Williams*, 173 Mich App 312, 314; 433 NW2d 356 (1988). Therefore, a defendant should not be shackled during trial unless extraordinary circumstances demand it. *People v Jankowski*, 130 Mich App 143, 146; 342 NW2d 911 (1983). Extraordinary circumstances include preventing a defendant's escape, protecting courtroom observers from injury, and maintaining order during the proceedings. *People v Dunn*, 446 Mich 409, 426; 521 NW2d 255 (1994); *Williams, supra* at 314.

The trial court here cited defendant's history of assaultive behavior while in prison and defendant's security classification in support of its decision. In my opinion, defendant's collection of misconduct tickets – even coupled with his high security classification – did not amount to “extraordinary circumstances” under which a defendant may rightfully be shackled before a jury at trial. The evidence presented showed only that defendant conducted himself poorly in prison; the evidence did not show that defendant presented an escape risk, or that he represented a risk to the safety of anyone in attendance at trial, or that without shackles, defendant was likely to disrupt the trial process. Where no compelling evidence exists to justify a court's decision to restrain a defendant at trial, the trial court has abused its discretion. *People v Baskin*, 145 Mich App 526, 545-546; 378 NW2d 535 (1985); *People v Johnson*, 160 Mich App

490, 493-493; 408 NW2d 485 (1987). The situation here was also exacerbated when the trial court, over defendant's objection, allowed a corrections officer to be stationed between defendant and the jury during defendant's trial testimony, thereby inevitably heightening defendant's presentment as extremely dangerous.

In the instant case, the trial court's abuse of discretion was not harmless error. As we stated in *Baskin* :

This is a situation where actions speak louder than words. The mere shackling of the defendant in this case impinged upon defendant's credibility by indicating that defendant was not to be trusted and prejudiced his right to a fair trial. [*Baskin, supra* at 546.]

I would reverse.

/s/ Harold Hood