

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 199994

Recorder's Court

DESHAWN ANTHONY WILLIAMS,

LC No. 94-007770

Defendant-Appellant.

Before: Saad, P.J., and Jansen and Hoekstra, JJ.

HOEKSTRA, J. (concurring.)

I agree with the majority's resolution of issue II and its ultimate conclusion to affirm defendant's convictions; however, I part company from the majority in its analysis of issue I because I do not find that the record supports its conclusion that the trial court abused its discretion in declaring a mistrial. My review of the record indicates that the missing attorney, the original defense counsel appointed to this case, was well acquainted with the facts of this case and the possible defense theories. The record reveals no reason to believe that the other counsel present in the courtroom on the trial date in question were there to assume defendant's case without delay or further inconvenience to the twice-recalled jurors. Indeed, the record implies that the other counsel were there merely for the purpose of providing the trial court with an explanation for the absence of defense counsel. Although the trial court failed to create a clear record of the proceedings, its decision to declare a mistrial in this case already fraught with delays and inconveniences does not, in my opinion, rise to the level of a decision made without justification or excuse. See *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996) (describing when an abuse of discretion exists).

/s/ Joel P. Hoekstra