

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of Contempt of CORNELIUS PITTS.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

and

THIRD CIRCUIT JUDGE,

Plaintiff-Appellee,

v

WILLARD DILLARD,

Defendant,

and

CORNELIUS PITTS

Defendant-Appellant.

UNPUBLISHED

December 29, 1998

No. 210279

Recorder's Court

LC No. 98-900064

Before: Doctoroff, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Defendant Cornelius Pitts appeals from an order of criminal contempt of court, MCL 600.1701(a), (b) and (c); MSA 27A.1701(a), (b) and (c). Pitts was sentenced to five days' imprisonment and ordered to pay a \$250 fine, MCL 600.1715; MSA 27A.1715. We reverse and remand.

Pitts represented the defendant, Willard Dillard, in the underlying criminal case. During his closing argument, Pitts broke a drinking glass in the courtroom. The trial court immediately halted the proceedings, dismissed the jury, and reprimanded Pitts, instructing him never again to endanger people in the courtroom. Trial resumed the next day, and Pitts apologized for breaking the glass. Prior to bringing the jury into the courtroom, the court instructed Pitts that he was to stay behind the defense table and give the remainder of his closing argument, if any, from the lectern.

Pitts proceeded to give his closing argument, and was halted by the judge. Pitts explained that the court had said, “you said not beyond the table.” The court responded, “the table’s back there. Back there.” Pitts again proceeded with his closing argument, asking the judge, “you don’t want me to go any further than this particular part?” The court responded, “that’s right.” Pitts then walked up to the bench and placed his elbow upon it, whereupon the court immediately halted the proceedings, dismissed the jury, found Pitts in contempt of court, and ordered him incarcerated.

On appeal, Pitts argues both that insufficient evidence existed to find him in contempt of court and that a hearing should have been held in front of a different judge. Because we agree with the latter argument, we decline to address the former.

While there are circumstances where a trial judge can and should act immediately on contempt, the strong preference is for the matter to be handled by a different judge. See *People v Kurz*, 35 Mich App 643, 660; 192 NW2d 594 (1971). We are persuaded that this matter could and should have been handled by a different judge. Accordingly, we reverse the contempt conviction and remand the matter to the trial court for proceedings before a different judge.

Our resolution of this issue renders Pitts’ other arguments moot and we therefore decline to review them. *People v Mitchell*, 223 Mich App 395, 401; 566 NW2d 312 (1997).

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Martin M. Doctoroff

/s/ David H. Sawyer

/s/ E. Thomas Fitzgerald