

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EMMETT ALONZO JONES,

Defendant-Appellant.

UNPUBLISHED

February 23, 2001

No. 219147

Kalamazoo Circuit Court

LC No. 98-001048-FH

Before: Talbot, P.J., and Sawyer and Markey, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of felonious assault, MCL 750.82; MSA 28.277. Defendant was sentenced as a third-felony habitual offender, MCL 769.11; MSA 28.1083, to a prison term of five to eight years. We affirm.

Defendant argues that the trial court's denial of his request for self-representation at trial was erroneous. We disagree.

Under *People v Anderson*, 398 Mich 361, 367-368; 247 NW2d 857 (1976), and MCR 6.005, a court must determine whether the request is made unequivocally, knowingly, intelligently, and voluntarily. Additionally, a court must determine that the defendant's "acting as his own counsel will not disrupt, unduly inconvenience and burden the court" or the court's administration of business. *Anderson, supra*. Furthermore, the court's compliance with this mandatory inquiry must be placed on the record. *People v Adkins (After Remand)*, 452 Mich 702, 723; 551 NW2d 108 (1996).

In this case, it is important to note the rule set forth by our Supreme Court in *Adkins, supra*, 452 Mich at 721, that a defendant must exhibit an intentional relinquishment or abandonment of the right to counsel, and the court should indulge every reasonable presumption against waiver of that right. See, also, *People v Dennany*, 445 Mich 412, 428; 519 NW2d 128 (1994).

Furthermore, a defendant "has either a right to counsel or a right to proceed in propria persona, but not both." *Adkins, supra*, 452 Mich at 720. The requirement that a defendant's request to represent himself be made unequivocally serves the purpose of "forcing the defendant to make an explicit choice" between the right to counsel and the right of self-representation.

Dennany, supra, 445 Mich at 444. If the defendant equivocates, “he is presumed to have requested the assistance of counsel.” *Id.* Additionally, “a request to proceed pro se with standby counsel—be it to help with either procedural or trial issues—can never be deemed to be an unequivocal assertion of the defendant’s rights.” *Id.* at 446.

We have carefully reviewed the record and we conclude that defendant’s attempted waiver of counsel and requests for self-representation, at hearings leading up to trial and at trial, were not unequivocally or voluntarily made. Although defendant adamantly expressed his desire to represent himself and insistently reminded the court of his right to do so, his desire was clearly contingent on how the court ruled with respect to defendant’s requests that counsel supply him with copies of various documents, and that he be allowed to directly address the court at will. Additionally, defendant himself characterized his request to waive counsel and to represent himself as involuntary, claiming that he “had no choice” but to take the course of action based on the court’s refusal to comply with his demands, although he would “rather not” represent himself. Under such circumstances, we conclude that defendant’s request for self-representation was neither unequivocal nor voluntary. Thus, the court did not err in ordering counsel to represent defendant and denying defendant’s request to represent himself at trial.

Defendant also argues that he was erroneously denied the right to represent himself at sentencing. We disagree. Throughout his case, defendant was not allowed to address the court directly; instead, defendant was told to communicate in writing or through counsel. In compliance with the court’s directions, defendant filed his own handwritten motion to proceed in pro per with the court in advance of the sentencing proceedings. The handwritten motion did not contain any new information and basically summarized the history of the case leading up to sentencing. The court treated the motion as a motion for reconsideration under MCR 2.119(F) and denied it, for merely presenting the same issues as ruled on earlier in the proceedings, and for failure to show that any palpable error occurred or that a different disposition of the motion would result from correction of the alleged error. We are not persuaded that the trial court erred in treating the motion as one for reconsideration nor in denying that motion.

Next, defendant argues that the court abused its discretion by excusing a juror midtrial. We will reverse the trial court’s decision to excuse a juror only upon a finding of a clear abuse of discretion, *People v Mason*, 96 Mich App 47, 50; 292 NW2d 480 (1980), and where the defendant can show prejudice, *People v Clyburn*, 55 Mich App 454, 457; 222 NW2d 775 (1974).

It is not necessarily error to excuse a juror after the jury is impaneled through an abundance of caution to secure an impartial jury, even when the juror is excused on a ground “not technically sufficient to support a challenge for cause.” *Clyburn, supra*, 55 Mich App at 456-457 (citations omitted). Here, the excused juror’s safety concerns and mixed feelings regarding her ability to be impartial support the court’s action. *Id.*

Finally, defendant argues that the court abused its discretion by refusing to permit the defense to present evidence regarding the dimensions of the apartment where the crime occurred.

The decision whether to admit evidence is within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of that discretion. *People v Lugo*, 214 Mich App 699, 709; 542 NW2d 921 (1995). An abuse of discretion occurs where a court’s action is so

violative of fact and logic as to constitute perversity of will or defiance of judgment. *People v Laws*, 218 Mich App 447, 456; 554 NW2d 586 (1996).

The court did not abuse its discretion in denying the late defense request. The length of the hallway was not relevant to any material issue going to defendant's guilt. It makes no material difference whether defendant was holding the knife when the police arrived, particularly in light of defendant's admission that he held the knife and used it to frighten the victim, and his testimony that he struck the victim. Additional testimony about the apartment's dimensions would have had no effect on the outcome of the trial and the court did not abuse its discretion by refusing to grant defendant's request.

Finally, there are additional issues to be addressed which defendant raises in his pro per supplemental brief. Defendant argues that the local policy in Kalamazoo County prohibiting defense attorneys from providing defendants with copies of police reports is unconstitutional. We disagree. Defendant's argument rests largely on the Sixth Amendment, particularly the confrontation clause and right to counsel clause. Defendant, however, points to no authority which stands for the proposition that a defendant has a constitutional right to a personal copy of a report supplied to defense counsel.

Furthermore, we are not persuaded that defendant's ability to confront the witnesses against him or to assist in his own defense is in anyway impeded by the policy. Counsel certainly has the ability to use the reports in preparing the defense, including the cross-examination of witnesses. Further, defendant is not significantly hampered in assisting in his own defense. Counsel is not prohibited from allowing defendant to read the reports or in reviewing the reports with defendant. Therefore, defendant had full access to the reports in terms of assisting in his defense. Accordingly, we find this issue to be without merit.

Affirmed.

/s/ Michael J. Talbot
/s/ David H. Sawyer
/s/ Jane E. Markey