STATE OF MICHIGAN

COURT OF APPEALS

IN THE MATTER OF THE CONTEMPT
OF WELLINGTON INDUSTRIES and
JOHN TALBOT.

THE RECORDER'S COURT FOR THE CITY OF DETROIT,

Plaintiff-Appellee,

v

WELLINGTON INDUSTRIES and JOHN TALBOT,

Defendants-Appellants.

UNPUBLISHED
February 10, 1998

No. 195458
Recorder's Court
LC No. 00160075 &
00160076

Before: Gage, P.J., and Murphy and Reilly, JJ.

MEMORANDUM.

Following show cause proceedings, defendants were convicted of contempt of court for having discharged from their employ a person who responded to a summons to jury service and was in fact selected to serve on a Recorder's Court jury. MCL 600.1348; MSA 27A.1348. The juror had served in the courtroom of the Hon. Kym L. Worthy; the show cause proceedings were conducted before a different judge, the Hon. Vera M. Jones. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendants first contend that Judge Jones conducted the trial in an unfair manner, reflecting a premature evaluation of the credibility of defense witnesses and defense evidence, intruding into the examination and cross-examination of witnesses, and *sua sponte* excluding evidence as hearsay. Our review of the record refutes this contention. While it would be erroneous for a trial judge in a bench trial to finally settle her mind before defense counsel was given the opportunity to review the facts from the defense point of view during closing argument, *People v Thomas*, 390 Mich 93, 95; 210 NW2d 776 (1973), the fact that the trial judge may have preliminarily evaluated the credibility of one or more witnesses or tentatively made factual conclusions does not deprive the defendant of any right to a fair trial. That the trial judge may have prematurely judged the case does not offend due process; it is only

denial of closing argument or other final opportunity to correct a premature misjudgment and avoid an otherwise erroneous verdict that produces an unfair trial. *Herring v New York*, 422 US 853, 863; 95 S Ct 2550; 45 L Ed 2d 593 (1975).

The judge who presides at a bench trial necessarily and properly acquires a view of the credibility and character of every witness, including any individual defendants. *Liteky v United States*, 510 US 540; 114 S Ct 1147; 127 L Ed 2d 474, 488 (1994). The record fails to substantiate any violation of the defendant's right to fair trial.

Defendants also contend that the trial court erred in excluding as hearsay statements of numerous witnesses ostensibly justifying the discharge of the employee based on a qualitative review of her work performance. Assuming *arguendo* that such evidence was admissible, the trial judge as trier of fact would not have been bound to give such evidence any weight in rendering a verdict. *People v Jackson*, 390 Mich 621, 625 n 2; 212 NW2d 918 (1973). Exclusion of evidence is reversible error only if a substantial right of the party was thereby affected, and only where the issue is preserved by offer of proof. MRE 103(a)(2). Since in this case the trial judge as trier of fact was aware of the substantive nature and purpose of the excluded evidence by virtue of this offer of proof process, and it is clear that, admissible or not, she considered it unworthy of evidentiary weight, any error in excluding the evidence was clearly harmless. *People v Jones*, 134 Mich App 371; 350 NW2d 885 (1984).

Affirmed.

/s/ Hilda R. Gage
/s/ William B. Murphy
/s/ Maureen Pulte Reilly