

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES HENRY ARTHUR,

Defendant-Appellant.

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UNPUBLISHED

June 26, 2012

No. 301762

Saginaw Circuit Court

LC No. 03-022744-FC

Before: O'CONNELL, P.J., and TALBOT and OWENS, JJ.

O'CONNELL, P.J. (*dissenting*).

According to the majority opinion, “the record fails to reveal any permissible reason for shackling Arthur during trial.” I disagree. The record indicates that for more than five years, veteran Judge Kaczmarek presided over four separate criminal proceedings against this defendant, involving at least 25 charges ranging from first-degree murder to third-degree fleeing and eluding. As early as February 2003, defendant, who stood six feet tall and weighed more than 200 pounds, wrote to Judge Kaczmarek to complain about being held in shackles. Later that year, defendant again wrote to the judge apologizing for his “behavior” and asking for a change of venue, apparently because witnesses against him knew him only by his nickname: Frank Nitti (the infamous mob enforcer depicted in “The Untouchables”).

In the following years, defendant continued to challenge the security of the court. As of 2004, defendant was in the custody of the Department of Corrections serving life sentences imposed by Judge Kaczmarek for two counts of first-degree murder. The proceedings then moved forward on the charges at issue in this case. Defendant asked the Saginaw Chief Judge to disqualify Judge Kaczmarek from the case and sought a writ of habeas corpus to attend a hearing on the disqualification. In April 2005, the Chief Judge denied the writ, noting that defendant “was considered a flight risk when incarcerated at the Saginaw County Jail.” The Chief Judge also denied the disqualification motion. At a subsequent hearing, defendant interrupted the proceedings to the extent that Judge Kaczmarek had to warn defendant that he would be restrained if his behavior persisted.

The next year, matters escalated. In April 2006, defendant received a major misconduct report from the Department of Corrections for engaging in threatening behavior while in a Saginaw holding cell. Among other things, the report stated that defendant kicked the cell door and yelled “I’m going to kick all these mother fuckers’ asses starting with the fucking judge.”

Defendant then appeared at a hearing in arm and leg shackles, with three security officers. His counsel requested that defendant be unshackled for trial. Judge Kaczmarek ordered that defendant's arm shackles be removed for trial. Recognizing, however, that defendant was subject to the Department of Corrections, Judge Kaczmarek deferred to the department's authority concerning the leg shackles. He noted, "Any other security is up to the Department of Corrections on that. I'm not a security expert and I'm not going to attempt to be." The jury ultimately convicted defendant of assault with attempt to murder and of armed robbery, among other things. Our Supreme Court reversed defendant's convictions and remanded the case to the trial court.<sup>1</sup>

With this background, Judge Kaczmarek had to determine whether on remand defendant's case presented the type of extraordinary circumstances that would warrant shackling during trial. The judge plainly knew of defendant's prior murder convictions and of the evidence against defendant on the remanded charges. In particular, the evidence at the first trial indicated that defendant had robbed an acquaintance, forced the acquaintance into the trunk of a car, and had then fired a gun several times into the trunk. The evidence also indicated that defendant had opened the trunk and fired several more shots at his acquaintance. By the time of the second trial on those charges, Judge Kaczmarek was well-acquainted with defendant and likely had no desire to end up like defendant's other acquaintances. Moreover, prior to the trial, the judge held a hearing at which he noted that he had spoken with counsel in chambers. The judge then addressed the trial security issue, stating that defendant's legs could be restrained if there was a "curtain" to obscure the restraints, but that defendant's hands must be unrestrained.

Given the trial judge's considerable experience with this particular defendant and the defendant's history of disruptive behavior, the trial judge was within his discretion in the resolution of the security issues presented by defendant. Accordingly, I respectfully dissent.

/s/ Peter D. O'Connell

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<sup>1</sup> The horrific facts from this Court's prior opinion were described as follows:

The victim testified that defendant pulled out a gun and took \$130 to \$140 dollars from him. Subsequently, defendant ordered the victim to drive into an alley where, consistent with defendant's demands, he got out of the car, stripped to his underwear and socks, and got into the trunk. Defendant then closed the trunk. While the car was being driven, defendant again asked about some money, and then shot the victim two to four times. When the car stopped, defendant opened the trunk and again asked about the money. The trunk again closed, and defendant drove to another location where he shot the victim four to five more times while he was lying in a fetal position in the trunk. [*People v Arthur*, unpublished opinion per curiam of the Court of Appeals, issued January 29, 2008 (Docket No. 273577), unpub op at 1.]