

**STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT
COUNTY OF DU PAGE**

PEOPLE OF THE STATE OF ILLINOIS,

VS

DEFENDANT.

)
)
)
)
)
)
)
)
)
)
)

No. _____

ORDER REGARDING ADMONISHMENTS

The Court hereby admonished the Defendant that:

1. The Defendant has a constitutional right to be present at all stages of his trial, including sentencing.
2. Should the Defendant fail to appear in court when required by the court his failure to appear would constitute a waiver of his right to confront the witnesses against him and the trial could proceed in his absence.
3. If the defendant is convicted and then fails to appear for the sentencing hearing when required by the court his failure to appear would constitute a waiver of his right to confront the witnesses against him and the sentencing hearing could proceed in his absence.
4. When a defendant after arrest and an initial court appearance for a non-capital felony or a misdemeanor, fails to appear for trial, at the request of the State and after the State has affirmatively proven through substantial evidence that the defendant is willfully avoiding trial, the court may commence trial in the absence of the defendant. 725 ILCS 5/115-4.1(a)
5. The Defendant has continuously objected to the appointment of an attorney to represent him and has insisted on proceeding pro se. Should the Defendant willfully fail to appear for trial or sentencing, an attorney will not be appointed to represent his interests.

6. Should the Defendant be in custody of the DuPage County Sheriff on either the trial date or the sentencing date, and refuse to attend the trial, the Court will consider such refusal as a willful avoidance of trial.
7. That during the pendency of the case, the Defendant has constantly interrupted this Court with objections and declarations thereby preventing a cogent and fluid record from being created.
8. That this Court has a duty to maintain order in the courtroom during the jury trial.
9. That the Defendant will be allowed to present relevant evidence at the trial, if he elects to present evidence.
10. That the Defendant will be allowed to object to the State's evidence in a reasonable manner that does not unduly affect the progression of the trial.
11. If the Defendant makes continuous frivolous motions or objections in an attempt to merely disrupt the proceedings the Defendant will be warned outside the presence of the jury.
12. If the Defendant continues to engage in conduct that is calculated to disrupt the trial and is conduct not supported by the rules of evidence, the Defendant will subject himself to sanctions of Contempt of Court.
13. In Illinois v. Allen (1970), 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353, the court held that shackling and gagging a defendant during trial was so prejudicial to defendant that it should only be done as a last resort. The court stated that " the sight of shackles and gags might have a significant effect on the jury's feelings about the defendant, but the use of this technique is itself something of an affront to the very dignity and decorum of judicial proceedings that the judge is seeking to uphold." 397 U.S. 337, 344, 90 S.Ct. 1057, 1061-1062, 25 L.Ed.2d 353, 359. However, the Allen Court concluded that a trial judge should bind and gag a defendant only when his behavior is so contumacious, disruptive or obstreperous that restraint is necessary to maintain an appropriate courtroom atmosphere.

14. In United States v. Theriault (5th Cir. 1976), 531 F.2d 281, the Court stated that, within the trial court's discretion, shackling may be justified when necessary to maintain the safe, reasonable and orderly progress of the trial. In order to ascertain whether to shackle a defendant, the trial court should determine if the defendant has been guilty of disorderly conduct in the courtroom; or if he poses a serious escape threat; or if he behaves in a disrespectful or disruptive manner.

15. In Illinois v. Allen (1970), 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353, the United State's Supreme Court stated "the Court of Appeals felt that the defendant's Sixth Amendment right to be present at his own trial was so "absolute" that, no matter how unruly or disruptive the defendant's conduct might be, he could never be held to have lost that right so long as he continued to insist upon it, as Allen clearly did. Therefore the Court of Appeals concluded that a trial judge could never expel a defendant from his own trial, and that the judge's ultimate remedy, when faced with an obstreperous defendant, like Allen, who determines to make his trial impossible, is to bind and gag him. We cannot agree that the Sixth Amendment, the cases upon which the Court of Appeals relied, or any other cases of this Court so handicap a trial judge in conducting a criminal trial. The broad dicta in Hopt v. Utah, supra, and Lewis v. United States, 146 U. S. 370 (1892), that a trial can never continue in the defendant's absence have been expressly rejected. We accept instead the statement of Mr. Justice Cardozo, who, speaking for the Court in Snyder v. Massachusetts said: "No doubt the privilege [of personally confronting witnesses] may be lost by consent, or at times even by misconduct." Although mindful that courts must indulge every reasonable presumption against the loss of constitutional rights. We explicitly hold today that a defendant can lose his right to be present at trial if, after he has been warned by the judge that he will be removed if he continues his disruptive behavior, he nevertheless insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom. Once lost, the right to be present can, of course, be reclaimed as soon as the defendant is willing to conduct himself consistently with the decorum and respect inherent in the concept of courts and judicial proceedings.

It is essential to the proper administration of criminal justice that dignity, order, and decorum be the hallmarks of all court proceedings in our country. The flagrant disregard in the courtroom of elementary standards of proper conduct should not and cannot be tolerated. We believe trial judges confronted with disruptive, contumacious, stubbornly defiant defendants must be given sufficient discretion to meet the circumstances of each case. No one formula for maintaining the appropriate courtroom atmosphere will be best in all situations. We think there are at least three constitutionally permissible ways for a trial judge to handle an obstreperous defendant like Allen: (1) bind and gag him, thereby keeping him present; (2) cite him for contempt; (3) take him out of the courtroom until he promises to conduct himself properly. This holding was referenced in *People v. Tatum*, 389 Ill. App. 3d 656, 667, 906 N.E.2d 695 (2009), in which a pro se defendant was removed from the courtroom.

16. Based on the language in section 115–4.1(a), as well as the related admonishments in section 113–4(e), considered in light of the legislative history, it has been held that section 115–4.1(a) is inapplicable to in-custody defendants. The trial court is not statutorily required to appoint a public defender and continue the trial date simply because defendant, after waiving his right to counsel, decided to waive also his right to be present by refusing to leave his holding cell. *People v. Eppinger*, 2013 IL 114121, ¶ 40, 984 N.E.2d 475, 487–88
17. If the Defendant's conduct is such that removal from the courtroom is warranted, an attorney will not be appointed to represent the Defendant and the Defendant will have forfeited his Sixth Amendment right to be present during the trial.
18. If the Court finds that a manifest need exists, the Defendant may be subjected to being bound and gagged during the trial.
19. Should the Defendant be gagged, the Defendant's gag will be removed following each examination of a witness by the State. Such "degagging" will take place outside the presence of the jury, and at that time the Defendant will be given an opportunity to place any objections regarding the direct examination on the record. If warranted by a sustained objection, the Court will give corrective instructions to the jury.

- 20. The Defendant will be given an opportunity to meaningfully cross-examine witnesses and to present relevant evidence, but may not take such opportunity to merely present irrelevant declarations or filibuster with his own personal political beliefs.
- 21. If the Defendant would like to wear clothing other than a jail jumpsuit for trial, he may ask this Court for a change of attire. If the Defendant doesn't have access to non-jail issued clothing the Court will attempt to obtain clothing for the Defendant.
- 22. This will be a 12 person jury. Each side will be afforded seven peremptory challenges. The State will ask questions of the potential jurors first, and upon accepting a panel of 12, the Defendant will have an opportunity to question individual jurors. Questions asked by the State and the Defendant must regard the competency of the potential juror to serve, and not regard issues of law or indoctrinate jurors to the facts of this case.
- 23. One alternate will be selected, and each party will be afforded one peremptory challenge.
- 24. The Court will ask the jurors what is referred to as the Zehr questions. In the absence of an objection from the Defendant, the following question will be asked.:

Do you understand and agree that should the Defendant choose not to testify in his own behalf, that decision cannot be held against the Defendant.

- 25. The Defendant is charged with the offense(s) of:

CHARGE	PENALTY

26. The State will call witnesses first, and after their direct examination, the Defendant may question the witness. The Defendant has the right to cross-examine witnesses and call witnesses in his own behalf, but is under no obligation to do so since the burden of proof is on the State.
27. Objections may be made by either party. However, if it becomes apparent that objections are being made with the intent to hinder and obstruct the court in its administration of justice, then the offending party will be required to make all objections at the conclusion of the testimony at which time the Court will consider the objection and whether a corrective admonition to the jury is warranted.
28. The Defendant has been provided a copy of this Order.

Date: _____

Judge Robert A. Miller