

A defendant was charged with two counts of murder. One trial witness was a child who had seen one of the killings. Before calling the child to testify, the prosecution moved to remove the defendant from the courtroom, arguing that the child would be intimidated by seeing the defendant. The court denied the motion.

When the child entered the courtroom to testify, the defendant became unruly, moving as though he was about to lunge from his chair toward the child. The judge warned the defendant to stop the behavior. After a second warning, the judge told the defendant that he would be removed from the courtroom if he continued to behave inappropriately. The defendant then shouted a threat at the child. At that point, the court ordered the defendant removed from the courtroom.

When the child finished testifying, subject to full cross-examination by defense counsel, the defendant was allowed back into the courtroom. The trial concluded, and the jury convicted the defendant. The defendant appealed the conviction, challenging only his exclusion from the courtroom.

Should the court of appeals reverse the conviction?

- A. No, because a defendant may be excluded from the courtroom to protect a minor witness from further trauma.
- B. No, because the right to be present can be forfeited by disruptive behavior.
- C. Yes, because the error requires automatic reversal.
- D. Yes, unless the error in excluding the defendant was harmless.

Incorrect

Correct answer B

Collecting Statistics

01 min, 58 secsTime Spent

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## Explanation:

The **Sixth Amendment right to confrontation** guarantees a criminal defendant the right to be **present at every critical stage of trial**—ie, any event in a criminal proceeding that holds significant consequences for the defendant—**unless** he/she:

**waives** this right by voluntarily leaving the proceedings *or* is **excluded for good cause** (ie, misconduct) after receiving a warning from the court.\*

Here, the defendant, who was charged with two counts of murder, became unruly when the child was about to testify against him. The judge twice warned the defendant to stop this behavior, but the defendant persisted. And since the right to be present can be forfeited by disruptive behavior, the judge properly removed the defendant from the courtroom. Therefore, the court of appeals should *not* reverse the defendant's conviction on this basis.

\*The Supreme Court has justified the removal of a defendant from the courtroom on the ground that the defendant's lawyer can adequately safeguard the defendant's rights.

**(Choice A)** A defendant may be excluded from the courtroom to protect a minor witness in the rare situation when it is necessary to further an important public policy other than a generalized presumption of trauma. To make this determination, the court must make individualized findings based on evidence, which did not occur here.

**(Choice C)** An appellate court should automatically reverse a defendant's conviction if the trial court committed a **structural error**—ie, an error that affected the entire framework of a criminal trial and rendered it fundamentally unfair. Removing a defendant from the courtroom during trial constitutes a structural error unless an exception to the defendant's right to be present applies (as seen here).

**(Choice D)** Most errors made by the trial court will be reviewed on appeal for harmless error. Under this standard of review, the government must prove beyond a reasonable doubt that the error did not contribute to the defendant's conviction, or the conviction will be reversed. However, no error occurred here.

## Educational objective:

The Sixth Amendment confrontation clause guarantees a criminal defendant the right to be present during every critical stage of trial. A defendant can lose this right only if he/she leaves voluntarily or is removed for good cause after receiving a warning from the court.

## References

Lewis v. United States, 146 U.S. 370, 372–73 (1892) (recognizing that the confrontation clause guarantees a criminal defendant's right to be personally present during every critical stage of trial).

Illinois v. Allen, 397 U.S. 337, 338 (1970) (holding that a defendant's right to be present at every stage of trial is lost when the defendant engages in disruptive behavior despite the judge's warning).

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### **Sixth Amendment right to be present at trial**

