STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERWIN RICHARDSON,

Defendant-Appellant.

UNPUBLISHED
September 16, 1997

No. 195839
Ingham Circuit Court
LC No. 95-69721-FC

Before: Kelly, P.J. and Reilly and Jansen, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of one count of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(f); MSA 28.788(2)(1)(f). Defendant was sentenced to serve thirty to sixty years in prison. We affirm.

Defendant first argues that the evidence of bodily injury was insufficient to establish the personal injury element of CSC I. We disagree. When reviewing the sufficiency of the evidence in a criminal case, this Court must view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992).

The element of personal injury may be satisfied by a showing of either bodily injury or mental anguish. *People v Himmelein*, 177 Mich App 365, 376; 442 NW2d 667 (1989), citing MCL 750.520a(j); MSA 28.788(1)(j). Bodily injury and mental anguish do not constitute alternative theories of guilt upon which jury unanimity is required. Instead, they are merely different ways of defining the single element of personal injury. *People v Asevedo*, 217 Mich App 393, 396-397; 551 NW2d 478 (1996). Accordingly, because the instant case was submitted to the jury under both the bodily injury and mental anguish definitions of personal injury and defendant does not challenge the sufficiency of the evidence of mental anguish, we need not consider defendant's challenge to the evidence pertaining to bodily injury. *Id*. at 397-398.

Next, defendant argues that the trial court erred when it instructed the jury that bruises are sufficient to constitute a bodily injury for purposes of CSC I. We disagree. Instructions to the

jury should be considered as a whole rather than extracted piecemeal to establish error. *People v Bell*, 209 Mich App 273, 276; 530 NW2d 167 (1995). Even if somewhat imperfect, there is no error if the instructions fairly presented the issues to be tried and sufficiently protected the defendant's rights. *Id.*

A trial court is required to instruct the jury concerning the law applicable to the case and to fully and fairly present the case to the jury in an understandable manner. MCL 768.29; MSA 28.1052; *People v Mills*, 450 Mich 61, 80; 537 NW2d 909, modified 450 Mich 1212; 539 NW2d 504 (1995). This Court, in *Himmelein*, *supra* at 377, held that evidence showing that the victim sustained "bruises, welts, or other marks to her hands, wrists, shoulder, groin and buttocks" was sufficient to support a finding of bodily injury. In doing so, the *Himmelein* Court explained that the Legislature intended evidence of even insubstantial physical injuries to be sufficient to support a conviction of CSC I. *Id.* at 377-378. Accordingly, we hold that the trial court's instruction that evidence of bruises could support a finding of bodily injury fairly presented the issues to be tried and sufficiently protected the defendant's rights. *Bell*, *supra* at 276.

Defendant's third argument on appeal is that he was unfairly prejudiced by the requirement that he wear a jail identification bracelet at trial and by the presence of a uniformed deputy sheriff in the courtroom. We disagree.

A defendant is entitled to be brought before the court in proper attire. *People v Lewis*, 160 Mich App 20, 30; 408 NW2d 94 (1987). Due process is denied when jail garb impairs the presumption of innocence. See *People v Daniels*, 163 Mich App 703, 710; 415 NW2d 282 (1987); *Lewis*, *supra* at 30-31. However, a defendant must object to his jail garb before the jury is impaneled, or waive his right to be tried in civilian clothes. *People v Turner*, 144 Mich App 107, 111; 373 NW2d 255 (1985); see also *People v Porter*, 117 Mich App 422, 424-426; 324 NW2d 35 (1982). A trial court's decision not to intervene when a defendant objects to jail garb is reviewed for an abuse of discretion. See *Turner*, *supra* at 111. In this case, defendant did not object to the jail identification bracelet until the second day of trial. Moreover, other than the jail identification bracelet, which resembled a hospital identification bracelet and was referred to by defense counsel as being "nondescript," defendant was dressed in civilian clothes. Accordingly, we hold that the trial court did not abuse its discretion when it chose not to intervene upon defendant's untimely objection. *Turner*, *supra* at 111.

In order to justify reversal of a conviction on the basis of courtroom security measures, a defendant must show that prejudice resulted. See *People v Loy-Rafuls*, 198 Mich App 594, 599; 500 NW2d 480, rev'd in part on other grounds 442 Mich 915; 503 NW2d 453 (1993); *People v Robinson*, 172 Mich App 650, 654; 432 NW2d 390 (1988). In this case, defendant's right to a fair trial was not unduly prejudiced by the presence of a uniformed deputy sheriff who may have been standing near defendant for a period of time on one day of defendant's four-day trial. Cf. *People v Mallory*, 421 Mich 229, 249; 365 NW2d 673 (1984); *Loy-Rafuls*, *supra* at 598-599.

Defendant's final argument on appeal is that his conviction must be reversed because of the improper admission of rebuttal testimony from Jennifer Turnbull and Kristi Lysik. We disagree. The admission of rebuttal evidence rests within the discretion of the trial court and will

not be disturbed absent a clear abuse of discretion. *People v Figgures*, 451 Mich 390, 398; 547 NW2d 673 (1996). If a defendant fails to object to the admission of rebuttal evidence, this Court will review the issue only for manifest injustice. *People v King*, 210 Mich App 425, 433; 534 NW2d 534 (1995).

Rebuttal evidence is admissible to contradict, repel, explain, or disprove evidence produced by the other party. *Figgures*, *supra* at 399. The prosecution may not introduce rebuttal evidence that relates only to a collateral matter. *People v Humphreys*, 221 Mich App 443, 446; ___ NW2d ___ (1997). In the instant case, defendant did not object to Turnbull's rebuttal testimony regarding the slip of paper containing her name and telephone number which was left by Steven Little on the television set in her apartment. This testimony was presumably offered to rebut defendant's testimony that Little intended to steal a "boom box" when he ran back to the apartment after the incident. Because evidence of Little's intent in returning to the apartment was collateral to the issue of defendant's guilt, see *People v Rosen*, 136 Mich App 745, 759; 358 NW2d 584 (1984), it should not have been admitted as part of the prosecution's rebuttal case. *Humphreys*, *supra* at 446. For the same reason, however, its admission did not amount to manifest injustice. *King*, *supra* at 433.

Finally, Lysik testified on rebuttal that, in response to her inquiry regarding defendant's actions after having sex with complainant, defendant told her, "What was done was done and I was ready to go." The trial court allowed Lysik's testimony over defendant's objection. On direct examination, defendant testified that he and Little left complainant's apartment shortly after defendant had sex with complainant and while complainant was still in the bathroom. Because defendant's statement, as offered through Lysik's rebuttal testimony, shed further light on defendant's state of mind as he was leaving complainant's apartment, it was responsive to defendant's evidence in the sense that it helped to explain his testimony. *Figgures*, *supra* at 399. Accordingly, we hold that the trial court did not abuse its discretion when it admitted Lysik's rebuttal testimony. *Id.* at 398.

Affirmed.

/s/ Michael J. Kelly
/s/ Maureen Pulte Reilly
/s/ Kathleen Jansen