STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 1, 2000
v	No. 216968 Saginaw Circuit Court
BILLY RAY MARTIN, Defendant-Appellant.	LC No. 98-015428 FH

Before: Gage, P.J., and Gribbs and Sawyer, JJ.

PER CURIAM.

After a jury trial, defendant was convicted of one count of second-degree home invasion, MCL 750.110a(3); MSA 28.305(a)(3). The trial court sentenced him as a fourth habitual offender, MCL 769.12; MSA 28.1084, to ten to thirty years' imprisonment. Defendant appeals as of right. We affirm.

Defendant first contends that his constitutional rights were violated when the trial court compelled him to appear before the jury during voir dire wearing his orange jail clothes. We review de novo the trial court's determination that defendant waived his right to appear before the jury in civilian attire, but we will not disturb the trial court's findings of fact unless they were clearly erroneous. *People v Abraham*, 234 Mich App 640, 644; 599 NW2d 736 (1999). Clear error exists if after reviewing the entire record we are left with the definite and firm conviction that a mistake was made. *People v Swirles (After Remand)*, 218 Mich App 133, 136; 553 NW2d 357 (1996).

A defendant may be denied due process of law by being compelled to go to trial wearing prison clothes, *People v Lee*, 133 Mich App 299, 300; 349 NW2d 164 (1984), but only if a defendant's clothing can be said to impair the defendant's presumption of innocence. *Estelle v Williams*, 425 US 501, 503, 504-505; 96 S Ct 1691; 48 L Ed 2d 126 (1976); *People v Lewis*, 160 Mich App 20, 30-31; 408 NW2d 94 (1987). The failure to timely object, before the empaneling of the jury and before the jury venire views the defendant in prison clothing, waives the defendant's right to be tried wearing civilian clothes. *People v Turner*, 144 Mich App 107, 109-110; 373 NW2d 255 (1985). To justify reversal of a conviction on the basis of this improper attire, a defendant must show that prejudice resulted. *People v Robinson*, 172 Mich App 650, 654; 432 NW2d 390 (1988); *People v Meyers (On Remand)*, 124 Mich App 148, 164; 335 NW2d 189 (1983).

Defendant timely raised the issue of his orange jail clothing immediately after his plea arrangement dissolved and before the jury was empaneled. No record indication exists that defendant's request represented a dilatory tactic or that he strategically elected to appear before the jury in jail clothing. Because defendant requested civilian clothing before the empaneling of the jury and relatively little time was needed for him to acquire his civilian clothing from the next door jail, we find that the trial court erred in refusing defendant's request and compelling him to commence trial wearing jail attire. *People v Shaw*, 381 Mich 467, 474; 164 NW2d 7 (1969) ("Under ordinary circumstances, a court has no discretion as to a criminal defendant's attire.").

In considering the effect of this error that violates the federal constitution, we must apply the federal harmless error standard. *People v Anderson (After Remand)*, 446 Mich 392, 404; 521 NW2d 538 (1994). Federal courts employ a harmless error standard in reviewing due process claims based on a compulsion to stand trial in prison attire, declining to reverse when the record contains "such overwhelming proofs of [the] petitioner's guilt" that the error "must be regarded as harmless beyond reasonable doubt." *Mitchell v Engle*, 634 F2d 353, 354 (CA 6, 1980). See also *Anderson*, *supra* at 405-406.

During the voir dire, defendant appeared in his orange jail clothing. During the noon recess, however, defendant changed into and thereafter appeared for trial in his civilian clothing. Defendant did not testify at trial, so his credibility was not at issue. The central trial issue was whether defendant was the person the complainant observed in his home on the afternoon of December 25, 1997. The complainant testified that through a picture window he observed defendant for some time in his living room before going to summon the police. Although the complainant had not selected defendant or anyone else from two photographic lineups, he positively identified defendant at the preliminary examination. Trial evidence showed that under a bench beneath the broken back bedroom window of the complainant's home, the police found defendant's wallet. The police tracked footprints through the fresh snow from the broken window of the complainant's home to 720 Cleveland Street in Saginaw, from which address one resident and her boyfriend testified that on that Christmas afternoon they gave defendant a ride while he carried in a dark trash bag what appeared to be a videocassette recorder.[1] In light of the strength of this evidence against defendant, we conclude that the trial court's error in refusing to permit defendant to don his civilian attire was harmless beyond a reasonable doubt. *Anderson*, *supra*.

Defendant next argues that the 180-day rule was violated where he was arrested on March 18, 1998 but did not go to trial until October 20, 1998. The 180-day rule provides that inmates within the custody of the department of corrections must be brought to trial on untried criminal charges within 180 days "after the department of corrections causes to be delivered to the prosecuting attorney . . . written notice of the place of imprisonment of the inmate and a request for final disposition." MCL 780.131(1);

[1] One of the individuals who gave defendant a ride testified that she assumed the object defendant carried was a VCR, but that she could not see the object through the dark bag. The complainant testified that defendant stole a compact disc player, a cordless digital telephone answering machine and "a little Olympus pro-recorder."

MSA 28.969(1)(1). The rule intends to give inmates the opportunity to have sentences run concurrently. *People v Connor*, 209 Mich App 419, 425; 531 NW2d 734 (1995). The rule only applies to state correctional facility inmates, and not to individuals lodged in county jails. *People v Wyngaard*, 151 Mich App 107, 112; 390 NW2d 694 (1986). "The Legislature intended that the statute apply to an inmate who is incarcerated as a result of a conviction other than the untried information in question." *People v Chambers*, 439 Mich 111, 116; 479 NW2d 346 (1992). Because every indication within the instant record suggests that until trial defendant remained in the Saginaw County Jail, and not any state correctional facility, awaiting trial on the instant charge and other charges, the 180-day rule does not apply to defendant. *Chambers*, *supra*; *Wyngaard*, *supra*.

Lastly, defendant claims that he was denied his federal and Michigan constitutional rights to a speedy trial. We will briefly consider this legal question, despite defendant's failure to properly preserve it. *People v Houston*, 237 Mich App 707, 712; 604 NW2d 706 (1999).

The right to a speedy trial is guaranteed to criminal defendants by the federal and Michigan constitutions and by statute. US Const, Am VI; Const 1963, art 1, § 20, MCL 768.1; MSA 28.1024. Whether a defendant has been denied a speedy trial depends on a balancing of four factors: (1) the length of delay, (2) the reasons for the delay, (3) whether the defendant asserted his right to a speedy trial, and (4) prejudice to the defendant. *People v Hill*, 402 Mich 272, 283; 262 NW2d 641 (1978). When the pretrial delay is less than eighteen months, a court will not presume prejudice arising from the delay and the defendant must show he was actually harmed. *People v Collins*, 388 Mich 680, 695; 202 NW2d 769 (1972). Because in the instant case only seven months intervened between defendant's arrest and his trial, defendant failed to assert his speedy trial right before the trial court, and defendant on appeal has failed to allege any particular prejudice to his defense arising from the delay, we conclude that no speedy trial violation exists. *Hill*, *supra*; *Collins*, *supra*.

Affirmed.

/s/ Hilda R. Gage
/s/ Roman S. Gribbs
/s/ David H. Sawyer