

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES STANLEY HOLLY,

Defendant-Appellant.

UNPUBLISHED

February 9, 2001

No. 214795

Genesee Circuit Court

LC No. 98-002257-FC

Before: Talbot, P.J., and O'Connell and Cooper, JJ.

COOPER, J. (*concurring*).

I concur with the majority's opinion.

I note, however, that the showing of prejudice from a defective jury selection is a nearly impossible burden, *People v Miller*, 411 Mich 321, 326; 307 NW2d 335 (1981), and normally such an error could not be considered harmless. However, based on the defense attorney's consent to the jury selection method in this case and Judge (now Justice) Corrigan's dissent in *People v Colon*, 233 Mich App 295; 591 NW2d 692; lv den 459 Mich 1004 (1999), I must agree that reversal is unwarranted. In *Colon*, Judge Corrigan indicated that a "trial court's failure to comply with the court rules was harmless error [if] its deviation [does] not dilute the effectiveness of defense counsel's use of peremptory challenges." *Id.* at 311. Since the jury selection methods in the present case and *Colon* were almost identical, I submit that defendant's peremptory challenges were not "diluted" despite an obvious deviation from the court rules. Consequently, the method of jury selection did not seriously affect the fairness or integrity of the trial court's proceedings.

/s/ Jessica R. Cooper