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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

GARY D. PEOPLES,

Defendant and Appellant.

2d Crim. No. B226204
(Super. Ct. No. BA362856)
(Los Angeles County)

Gary D. Peoples appeals from a judgment after conviction by jury of one count of robbery and one count of petty theft with a prior. (Pen. Code, §§ 211, 666.)[1] The jury found true allegations that appellant had served six prior prison terms and had two prior serious felony convictions and two prior strike convictions. (§§ 667.5, subd. (b), 1170.12, subds. (a)-(d), 667, subds. (a)-(i).) The trial court sentenced him to 15 years in state prison after striking the prior strikes and the prior prison terms. (§ 667, subd. (a)(1).)

[1] All statutory references are to the Penal Code unless otherwise stated.

The trial court denied appellant's right to be tried in civilian clothing, as guaranteed by the Fourteenth Amendment of the United States Constitution. We nevertheless affirm because the evidence of his guilt is overwhelming.

FACTUAL BACKGROUND

Appellant represented himself at trial. He had stand-by counsel, a court-appointed runner, and a court-appointed investigator. Just before prospective jurors arrived for voir dire, the prosecutor noted that appellant was in jail clothing:

"[PROSECUTOR]: Mr. Peoples is dressed in his jail clothing.

"[COURT]: Yeah.

"[PROSECUTOR]: Mr. Peoples, you --

"[APPELLANT]: I don't have a suit. I could call my people, but I don't know if they'll bring me one. I'm not sure because I only got one person to contact and --

"[PROSECUTOR]: Sir, you understand that you do have the right to dress in civilian clothes?

"[APPELLANT]: Do you guys have any extras?

"[COURT]: That's up to you, Sir. You need to arrange that.

"[APPELLANT]: Okay. All right. Right now, I don't have any right now, so--

"[PROSECUTOR]: Okay.

"[APPELLANT]: -- I would like to -- probably after the weekend, you know, I can get -- I don't know if [I] can get one by tomorrow.

"[COURT]: You announced ready in [Department] 100 and we're ready to go.

"[APPELLANT]: Well, see, that's just the problem. I had no idea about that suit. I thought you could go in this attire.

"[COURT]: You can go in that attire.

"[APPELLANT]: Well, I'm going in this attire.

"[COURT]: You're okay with that?

"[APPELLANT]: Yeah."

During voir dire, appellant said to prospective jurors that he was dressed "in the blues." The prosecutor told them that appellant could wear civilian clothes if he wished. "[H]e has described his attire as blues, he's in county jail attire. Do all of you understand that he has the right to wear civilian clothes if he wishes, and that he's choosing not to do that?" Later, the prosecutor said, "Mr. Peoples is . . . wearing jail clothes . . . . [¶] Does everyone understand that if Mr. Peoples wanted to not wear jail clothes for this trial he could wear whatever clothes he wanted to, including civilian clothes?"

A juror asked the prosecutor what would happen if appellant could not afford a suit. "I understand that he has that right, but if he's indigent would he be provided with different clothes to wear[?] [¶] If he had a financial issue and was indigent and couldn't afford a suit, would he be provided with one[?]"

The trial court answered, "To be quite honest there would be clothes available. The issue is if the defendant wanted to keep from the jury the fact that he was currently incarcerated . . . ."

Appellant said, "That's not true, Your Honor. [¶]. . .[¶] I asked you . . . ." The court said, "Let me finish. Let me finish. They would have been provided to him."

The prosecutor then asked the prospective jurors if appellant's jail clothing would make anyone sympathetic. Prospective juror number 25, who served on appellant's jury, said it would have the "opposite" effect. "[I]t's more the flip side of your question. It doesn't give me sympathy, it's more like why would he do that . . . . [¶]. . .[¶] It would actually cause me the opposite." Several other prospective jurors agreed.

Four witnesses testified at trial: the victim, two police officers, and appellant. The victim, Odessa Bowden, testified that she was working in her clothing store on Crenshaw Boulevard when appellant parked a shopping cart in

the doorway and entered the store. She had never seen him before. He picked up some earrings and threw them down. He was "very animated," and acted "schizy." He grabbed her wrist and pulled her ponytail. He told her to shoot him. She told him she did not have a gun. She was scared and told him to leave. He picked up a pair of white pants and a purse, moved toward her in a threatening way, and then left. Bowden called the police. They arrived within five or seven minutes. She described appellant to them, including his "huge rhinestone belt buckle."

Officer Joseph Kelly testified that he found someone matching that description about 20 minutes later, about 5 blocks down Crenshaw Boulevard, pushing a shopping cart. The white pants and purse were in the main compartment of the cart. They were not in a bag and they were not dirty. At trial, Kelly identified appellant as "wearing a blue jumpsuit." Before Kelly and his partner found appellant, they received a report of another possible robbery in the area describing a similar suspect.

Bowden identified appellant just after his arrest. At trial, she identified him as the man "in the blue jumpsuit."

Appellant testified that he did not go into Bowden's store on the day he was arrested. He was "on a whole nother mission," on Crenshaw to sell some hats and candy. He was "high" on cocaine and alcohol. He needed "to get more money," to keep his "equilibrium" which he achieves if he "get[s] enough coke with the alcohol." He said nothing can stop him when he is on a mission, so he would not have stopped at Bowden's store.

Appellant testified that he was pushing his cart along Crenshaw when a woman stood in front of him and screamed, "You don't remember me?" She "flagged" the police, who appeared and immediately "gaffled" him. They pulled a pair of pants and a purse out of a bag that was in his cart. He had never seen the items before. If the pants and purse were not in a bag they would have been dirty. His cart was wet and dirty because he recycles. He said that Bowden must have had another woman jump in front of his cart and put the stolen things in

it because Bowden must have something against him. He acknowledged prior convictions for commercial burglary and petty theft with a prior. He was arrested in this case within two months of his most recent release.

Appellant called Kelly's partner, Officer Luis Aceves, as a defense witness. Aceves did not see a woman flag the officers down. He did not see hats or candy in the cart. He saw many bags of "Cheetos" in the cart. The white pants and purse were not in a bag. They were loose in the child seat compartment. He identified appellant as "wearing the blue clothes."

At the close of evidence, the court instructed the jury not to consider appellant's incarceration or his "L.A. County supplied blue jumpsuit" for any purpose. In closing argument, the prosecutor said, "He's had it his way. He's been able to do -- he's been able to conduct this trial in a manner that he chose to do, which is representing himself, and dressing in jail clothes."

Appellant moved for a new trial on the grounds that he had been denied his due process right to be tried in civilian clothing because he did not understand he had a right to be provided with civilian clothing. The court denied the motion, concluding that any error could not have affected the verdict.

DISCUSSION

"'[T]he presumption of innocence requires [pardon the expression] the garb of innocence . . . .'" (*People v. Taylor* (1982) 31 Cal.3d 488, 495.) A court may not, consistent with the Fourteenth Amendment, compel an accused to be tried in jail clothing. To do so impairs the presumption of innocence and puts those who cannot afford to post bail at a disadvantage. (*Estelle v. Williams* (1976) 425 U.S. 501, 504; *Taylor*, *supra*, at p. 495.)

"[T]he trial judge should take all reasonable measures to assure that a defendant who so desires may stand trial in civilian clothes." (*People v. Taylor*, *supra*, 31 Cal.3d at p. 496.) Administrative inconvenience does not justify denial of the right to be tried in civilian clothing. (*Estelle v. Williams*, *supra*, 425 U.S. at p. 505.)

The right to wear civilian clothing "may be waived only expressly or by failure to make a timely objection to the defendant's jail clothing." (*People v. Taylor*, *supra*, 31 Cal.3d at p. 501.) The waiver must be "knowing." (*People v. Hetrick* (1981) 125 Cal.App.3d 849, 854, *Taylor*, *supra*, at p. 498.)

Appellant timely objected to being tried in jail clothing when he asked the court for "any extras," before the jury had seen him. His objection was timely because he made it before the jury had seen the defendant in noncivilian clothing. (*People v. Pena* (1992) 7 Cal.App.4th 1294, 1305.) His objection was sufficient because it called the matter to the court's attention, giving it an opportunity to remedy the situation. (*People v. Taylor*, *supra*, 31 Cal.3d at p. 496; *People v. Hetrick*, *supra*, 125 Cal.App.3d at p. 854.)

When appellant agreed to be tried in jail clothing, he did not know that he was entitled to have clothes supplied, or that he was entitled to any "reasonable measures to assure that [he could] stand trial in civilian clothes." (*People v. Taylor*, *supra*, 31 Cal.3d at p. 496.) He said, "Well, I'm going in this attire," and he said that he was "okay with that," but this was not a knowing waiver. The trial court had just told him he had no right to any assistance. When appellant asked for "extras," it said, "That's up to you, Sir. You need to arrange that." When appellant said he could probably get clothing over the weekend, the court said, "We're ready to go," and did not explore any alternatives. It appears from the record that appellant was arrested in civilian clothing. Stand-by counsel, a runner, and an investigator were available who could have helped to arrange civilian clothing. Appellant is like the defendant in *Hetrick* who did not intentionally relinquish a known right because he did not know that "he was entitled to have civilian clothes supplied to him." (*People v. Hetrick*, *supra*, 125 Cal.App.3d at p. 854.)

It is possible that appellant did wish to be tried in jail clothing but his statements were equivocal. We must look with disfavor on inferred waivers of

constitutional rights and we must indulge every reasonable presumption against waiver. (*Barker v. Wingo* (1972) 407 U.S. 514, 525.)

Frustration with delay was not sufficient justification for denial. In *People v. Taylor, supra,* 31 Cal.3d 488, the court erred when it refused a request for civilian clothing on the first day of trial, just before the jury entered. The court pointed out that a jail rule required that civilian clothing be delivered to the jail in advance. The defense did not comply with the rule, and the defendant appeared for trial in jail clothing. His counsel asked for a recess to retrieve civilian clothing from his office. The trial judge said, "We are ready to proceed. Everybody's here. We're not going to take time for him to change clothes . . . ." (*Id.* at p. 497, fn. 3.)

Similarly, in *People v. Meredith* (2009) 174 Cal.App.4th 1257, 1262, the court erred when it denied a request, made just before voir dire, for a recess to procure civilian clothing that would fit the defendant's unusually large frame. And in *People v. Hetrick, supra,* 125 Cal.App.3d 849, the court erred when it denied defense counsel's request, on the first day of trial, to "send [the defendant] down to jail to get civilian clothing." (*Id.* at p. 852.) Hetrick said, "My clothes were wet when I was arrested in Oregon. They sat for three months, and they smell of mildew. This [jail clothing] is all I have got." (*Ibid.*) The court responded, "Very well. We will proceed with the trial at this time." (*Ibid.*) The "colloquy [was] no more a waiver than the act of a homeless pauper is a choice to sleep under a bridge." (*Id.* at p. 855.)

Likewise, in *People v. Pena, supra,* 7 Cal.App.4th 1294, defense counsel asked, just before the prospective jurors entered, if his client could "go downstairs, get some clothing before the trial commences." (*Id* .at p. 1303.) The court erred when it said, "We have been out here for the last 15 minutes. If he just made this request now, that is denied. The jury is coming in." (*Ibid.*)

Because the error is of federal constitutional dimension, we must determine if it was harmless beyond a reasonable doubt. (*Chapman v. California* (1967) 386 U.S. 18, 24.) In *Taylor,* the denial of civilian clothing was not

harmless beyond a reasonable doubt because credibility was crucial and the defendant's account was plausible and corroborated. (*People v. Taylor*, *supra*, 31 Cal.3d at p. 500.) In *Hetrick*, too, the error was not harmless beyond a reasonable doubt because credibility was crucial, the defendant's account was plausible, and false identification was possible in the "fast moving restaurant altercation." (*People v. Hetrick*, *supra*, 125 Cal.App.3d at p. 855.) But in *Pena*, the error was harmless beyond a reasonable doubt where the defendant's credibility was crucial, but his account was "farfetched" and "almost entirely uncorroborated" and the victim's account was corroborated by physical evidence and witnesses. (*People v. Pena*, *supra*, 7 Cal.App.4th 1294 at pp. 1306-1307.)

This case is similar to *Pena*. Appellant's credibility was crucial, but his account was farfetched and uncorroborated. He testified that an unidentified woman must have put the stolen items in his cart as part of a "set up" with Bowden, but the officers did not see a woman near appellant's cart. Bowden said she did not know the woman appellant described. She said she had never seen appellant before the theft and she did not plan to set him up with anyone. Appellant did not claim to see the woman put the items in his cart, but he speculated that she must have. As he said to Bowden, "there's no real way that I can prove you had a friend or accomplice [or] if something else might have happened back in the day . . . ." Bowden's testimony, by contrast, was plausible. It was corroborated by the white pants and purse in appellant's cart and by the officers' testimony that they found appellant, matching Bowden's description, on Crenshaw Boulevard pushing the cart 20 minutes after the theft.

In light of the entire record, the probable impact of the jail clothing on appellant's credibility was negligible. Appellant was, by his own account, very intoxicated. He repeatedly told the jurors he had been drinking "the Olde English" and smoking "the yaya." He told them that he was caught in a cycle of drug and alcohol use, and that he needed to undertake sales "missions" to maintain his toxic "equilibrium." He had prior theft convictions and told the jurors, "[W]here I got

the hats, I don't have to tell you that, but I had candy and hats for sale." When the prosecutor asked him if the items in his cart were stolen, he asked the officer to specify "which items." Based on our examination of the entire record, we conclude it is not reasonably possible that the denial of civilian clothing might have materially influenced the jury in arriving at its verdict. (*People v. Coffey* (1967) 67 Cal.2d 204, 219-220, overruled on other grounds in *Curl v. Superior Court* (1990) 51 Cal.3d 1292, 1304, fn. 7.)

Criminal Convictions Assessment and Court Security Fees

The trial court did not impose a $30 criminal conviction court facilities assessment and a $30 court security fee for each conviction, as required by Government Code section 70373, subdivision (a)(1) and section 1465.8, subdivision (a)(1). We will affirm the judgment to include these mandatory fees. (*People v. Crabtree* (2009) 169 Cal.App.4th 1293, 1328.)

DISPOSITION

The trial court shall amend the abstract of judgment to reflect a $30 criminal conviction assessment and a $30 court security fee for each conviction, and forward the amended abstract of judgment to the Department of Corrections. The judgment is otherwise affirmed.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Jose I. Sandoval, Judge

Superior Court County of Los Angeles

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