

21.5 Right to Appear in Civilian Clothes

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A. Basis of Right

Federal constitution. Trial of a defendant in prison garb has been recognized as an affront to the dignity of the proceedings and as jeopardizing a defendant's due process right to a fair trial; thus, the State may not compel a defendant to appear for trial before a jury in identifiable prison or jail clothing. The constant reminder of a defendant's condition implicit in prison attire may affect a juror's judgment and thereby endanger the presumption of innocence by creating an unacceptable risk that the jury will impermissibly consider that circumstance in rendering its verdict. Unlike the need to impose physical restraints on unruly defendants, "compelling an accused to wear jail clothing furthers no essential state policy." *Estelle v. Williams*, 425 U.S. 501, 505 (1976).

The U.S. Supreme Court in *Estelle* also recognized that defendants who are compelled to stand trial in prison garb are usually "only those who cannot post bail prior to trial" and to "impose the condition on one category of defendant, over objection, would be repugnant to the concept of equal justice embodied in the Fourteenth Amendment." *Id.* at 505-06.

Whether a defendant was prejudiced by being compelled to stand trial while wearing prison attire is subject to harmless error analysis on appeal. The State has the burden of showing that the error was harmless beyond a reasonable doubt. *Id.*

Statutory right to wear civilian clothes in superior court. To protect a defendant's right to be tried in clothing other than prison garb, North Carolina law prohibits any sheriff, jailer, or other officer from requiring a defendant to appear for trial in superior court dressed in the uniform of a prisoner or in any apparel other than ordinary civilian dress (or with a shaven head unless it was shaven while the defendant was serving a term of imprisonment for the commission of a crime). A violation of this prohibition is a Class 1 misdemeanor. G.S. 15-176. Since the statute applies only to trials, defendants are not entitled to wear civilian clothing at pretrial hearings.

While it is unlawful for an official to require a defendant to appear for trial in prison garb, it is not necessarily unlawful for a defendant to so appear. Where a defendant is given the opportunity to obtain alternate clothing but refuses to do so, he or she may stand trial in a prison uniform. *See State v. Westry*, 15 N.C. App. 1 (1972).

The N.C. Court of Appeals has held that although a defendant may not be required to wear the clothing of a prisoner or convict, G.S. 15-176 does not prohibit requiring the defendant to wear an unobtrusive form of identification, such as a wristband. *See State v. Johnson*, 128 N.C. App. 361 (1998).

Civilian clothes in district court. The above cases and statutes do not recognize a right for a defendant to wear civilian clothes in district court. The holding in *Estelle* applies only to trials “before a jury.” *See Estelle*, 425 U.S. 501, 512. G.S. 15-176 applies only to trials in superior court.

Some of the reasons for not requiring a defendant to appear in jail clothing have been recognized, however, as potentially applicable to cases tried before a judge.

There are considerations here other than possible bias. These considerations were undoubtedly overlooked in the press of immediate decision. One is equality before the law. A defendant who can afford bail appears for trial in the best array he can muster. He may be a veritable satyr clad like Hyperion himself. Imposition of jail clothing on a defendant who cannot afford bail subjects him to inferior treatment. He suffers a disadvantage as a result of his poverty. Our traditions do not brook such disadvantage. The second consideration is psychological. Some defendants may be callous; others confused and embarrassed by prison garb to the point where they may be handicapped in presenting or assisting their defense. Presumed to be innocent, the prisoner is entitled to as much dignity and respect as safety allows. As one court tersely put it: “The presumption of innocence requires the garb of innocence” (*Eddy v. People*, 115 Colo. 488 [174 P.2d 717, 718].)

People v. Zapata, 220 Cal. App. 2d 903, 911 (1963) (footnote omitted) (holding that these considerations apply to a trial before a judge, but that the error did not cause a miscarriage of justice and did not require reversal); *see also State v. Billups*, 301 N.C. 607, 617 (1981) (Exum, J., dissenting) (dissenters observed in a case before a jury involving shackling [discussed *infra* in § 21.6, Right to Appear Free of Physical Restraints] that “the presumption of innocence requires the garb of innocence, for ‘regardless of the ultimate outcome, or of the evidence awaiting presentation, every defendant is entitled to be brought before the court with the appearance, dignity, and self-respect of a free and innocent man’” (citations omitted)).

Practice note: In light of the lack of authority guaranteeing a defendant the right to appear in civilian clothing in a nonjury trial, if you would like your client to appear in civilian clothing for trial before a district court judge, you should make that request to the judge before trial *and* show why requiring your client to appear in jail clothing would deny his or her due process right to a fair trial in that case. For example, in a case that turns on eyewitness identification, the defendant’s appearance in jail clothing could

influence the witnesses' testimony (in addition to implicating the more general concerns discussed above).

Statutory right for defense witnesses to appear in civilian clothes in superior court.

G.S. 15-176 also provides that it is unlawful for any sheriff, jailer, or other officer to require *any prisoner* to appear in any court for trial while dressed in prison garb. Violations of this prohibition are Class 1 misdemeanors. G.S. 15-176; *see also State v. Knight*, 87 N.C. App. 125 (1987) (trial judge did not abuse discretion in denying defendant's motion for mistrial; the jailer wrongfully brought a defense witness into the courtroom in his jail uniform and handcuffed, but the appearance was brief and the judge immediately ordered the witness removed and declared a recess while the witness changed into civilian clothing).

Practice note: If you wish to have a defense witness testify while wearing civilian clothes, you should ensure that the witness has access to appropriate clothes and request that the jailer produce the witness for court in the civilian clothes. If the jailer does not comply, you must make a motion on the record for the witness to appear in civilian clothes or the error will be waived on appeal. *See State v. Abraham*, 338 N.C. 315 (1994) (no abuse of discretion found where defense counsel made no specific motion to permit three incarcerated defense witnesses to appear in civilian clothes and the trial judge required the witnesses to testify while in prison uniform and physically restrained).

B. Preservation of Issue for Appeal

Necessity for objection. The failure of a defendant to object to being tried in prison clothing "is sufficient to negate the presence of compulsion necessary to establish a constitutional violation." *Estelle v. Williams*, 425 U.S. 501, 512–13 (1976); *cf. State v. Tolley*, 290 N.C. 349, 371–72 (1976) (citing *Estelle* and finding that any error in shackling of defendant was waived because defense counsel made no objection). Counsel must specifically assert a constitutional and statutory basis for the objection to preserve the issue on both grounds on appeal. *See generally State v. Holmes*, 355 N.C. 719 (2002) (where defendant failed to object on constitutional grounds, review of the trial judge's decision to restrain was limited to statutory error pursuant to the abuse of discretion standard). The trial judge is not required to inquire of the defendant or defense counsel whether the defendant is deliberately going to trial in jail clothes. *Estelle*, 425 U.S. 501.

Record must affirmatively show that the defendant was in jail clothing. The nature of clothing worn by a defendant may make it unclear whether the attire is in fact a prison or jail uniform. Some jail uniforms are comprised of standard-issue trousers and shirts and are not readily associated with the attire of a prisoner. To preserve the issue for appeal, a defendant required to wear a uniform for trial should ensure that the record includes evidence of the type of clothing he or she is wearing and evidence that his or her apparel is in fact a jail uniform. *See, e.g., State v. Simpson*, 202 N.C. App. 586 (2010) (unpublished) (finding sufficient evidence that defendant's white pants, white T-shirt, and white tennis shoes were prison garb but holding that violation was not prejudicial and did not require reversal where defendant was on trial for assaulting a prison guard at the unit

where he was housed and jury therefore knew that defendant was incarcerated); *cf. State v. Berry*, 51 N.C. App. 97 (1981) (insufficient showing that defendant appeared in prison garb where record showed defendant appeared in green pants, white socks, tennis shoes, and a white T-shirt).