

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CARL WILLIAM JOLLEY,

Defendant-Appellant.

UNPUBLISHED

July 25, 1997

No. 191576

Houghton Circuit Court

LC No. 95-001365 FH

Before: Jansen, P.J., and Wahls and P.R. Joslyn*, JJ.

MEMORANDUM.

Defendant appeals by right his jury conviction for indecent exposure, the punishment for which was augmented by virtue of defendant's plea of guilty to a charge preferred under the further portion of the statute addressing sexually delinquent persons. MCL 750.335a; MSA 28.567(1).

Defendant first contends that the circuit court was without jurisdiction to try the first segment of the prosecution, which addressed only the underlying misdemeanor offense. Defendant's argument is without merit in light of *People v Winford*, 404 Mich 400, 408 n 11; 273 NW2d 54 (1978).

Defendant's remaining contention is that the circuit court erred in impaneling a jury of only six persons and permitting defendant only three peremptory challenges in the jury selection process. That number of jurors and peremptory challenges is expressly authorized by MCR 6.620(A) and (B), a rule which by its terms applies only to misdemeanor prosecutions in district court. Here, after preliminary examination, defendant was bound over to stand trial in circuit court, and the district court had no remaining jurisdiction over the case. MCR 6.410(A) declares that "except as provided *in this rule*, a jury that decides a case must consist of 12 jurors." [Emphasis added]. Other than MCR 6.620, there is no authority for impaneling a jury of fewer than 12 persons, or allowing fewer than 5 peremptory challenges, MCR 6.412(E)(1), in misdemeanor prosecutions, thereby invoking the permissive provisions of Const 1963, art 1, § 20. The Michigan Supreme Court recognized as much in *People v Helzer*, 404 Mich 410, 423-424; 273 NW2d 44 (1978), when it applied the peremptory challenge standards applicable in circuit court to each separate phase of a prosecution involving a statute with an

* Circuit judge, sitting on the Court of Appeals by assignment.

augmentation provision for sexually delinquent persons. Defendant having timely objected to trial by a jury of fewer than 12 and to being allowed only 3 peremptory challenges, this violation of the court rules was reversible error. *People v Champion*, 442 Mich 874; 500 NW2d 470 (1993).

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen

/s/ Myron H. Wahls

/s/ Patrick R. Joslyn