

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JACK BRADFORD MCCLURE,

Defendant-Appellant.

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UNPUBLISHED

September 10, 2009

No. 285831

Oakland Circuit Court

LC No. 2007-217532-FH

Before: M. J. Kelly, P.J., and K. F. Kelly and Shapiro, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree fleeing or eluding a police officer, MCL 257.602a(4), and was sentenced as an habitual offender, fourth offense, MCL 769.12, to 30 months to 20 years' imprisonment. He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

At approximately 11:30 p.m., Sergeant Solewell observed a vehicle driven by defendant traveling at a high rate of speed through a 25 miles per hour school speed zone. The officer pulled out from the school parking lot to affect the stop, and defendant's vehicle turned into the parking lot of an apartment complex approximately 50 feet from the school parking lot. Solewell followed. The lights of the police car were on and the police car was a half of a car length from defendant's vehicle. When defendant's vehicle did not stop, Solewell activated the siren as well. Defendant's vehicle proceeded approximately 200 to 300 yards to the end of the complex, turned, and went completely around a building; the squad car was less than a half a car length behind defendant's vehicle. After beginning a second loop, defendant gestured like he was going into a parking space at the carport, and he pulled in slightly. Sergeant Solewell blocked him in.

Sergeant Solewell approached and asked why defendant did not stop for the lights and sirens, and defendant "indicated that he was scared because he knew that he had had a warrant." Defendant claimed that he had gone to pick up some food for his girlfriend at the complex and that there were purses in the car. The women were contacted and they retrieved their property. Defendant was cooperative, respectful, and did not resist in any way. Defendant passed field sobriety tests and a PBT registered at .03. He was issued citations for driving while license suspended and with open intoxicants. According to Sergeant Solewell, the chase was at speeds of between 15 and 20 miles an hour, lasted approximately a half-mile, and took approximately five minutes.

Defense witness Corrina Hill-Purdy testified that defendant left her apartment at the complex to get some fast food. She later saw the police at the carport near the entrance to her building. The police called her on her cell phone and she went down to the parking lot where she saw defendant, who appeared scared.

Defendant first argues that his appearance before the jury in jail attire infringed on his right to the presumption of innocence.

Before the prospective jurors entered, defense counsel informed the trial court that defendant was wearing a “prisoner pair of trousers,” on which “prisoner” was written, a tee shirt and a blazer. Counsel asserted that defendant would be substantially prejudiced with respect to getting a new trial. The court denied the request and stated, “As long as you remain seated, there’s not going to be a problem so have a seat.” After the jury was selected, the prosecutor suggested that, because defendant was unable to rise for the jury because of the way he was dressed, the “please rise” directive should be discontinued because it may appear that defendant was being disrespectful when he remained seated.

In *People v Shaw*, 381 Mich 467, 474; 164 NW2d 7 (1969), the Court stated:

Under ordinary circumstances, a court has no discretion as to a criminal defendant's attire. The rule of law is stated in 21 Am Jur 2d, Criminal Law, § 239, pp 275, 276, as follows:

“Since the defendant, pending and during his trial, is still presumed innocent, he is entitled to be brought before the court with the appearance, dignity, and self-respect of a free and innocent man, except as the necessary safety and decorum of the court may otherwise require. He is therefore entitled to wear civilian clothes rather than prison clothing at his trial. It is improper to bring him into the presence of the jury which is to try him, or the venire from which his trial jury will be drawn, clothed as a convict.”

However, “[i]f the trial court observes the defendant’s clothing and finds that it is not ‘prison garb,’ this Court will review only for abuse of discretion.” *People v Harris*, 201 Mich App 147, 151-152; 505 NW2d 889 (1993). In the present case, the trial court determined that defendant’s pants did not look like prison clothing unless defendant stood up. Defendant does not claim that he stood up before the jury. In these circumstances, the court’s decision to proceed with the trial was not an abuse of discretion.<sup>1</sup>

Defendant contends that, because of his clothing, he chose not to testify. Although he raised this issue in his motion for new trial, he did not preserve the issue by alerting the trial court that his attire interfered with his desire to testify. Therefore, we will review the issue for

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<sup>1</sup> We caution trial courts against allowing prisoners to wear any type of prison clothing at trial, no matter how innocuous it may appear. While it was not error warranting relief in this case, it seems to invite appellate review and it is not difficult to imagine circumstances where it would warrant relief.

plain error affecting substantial rights pursuant to *People v Carines*, 460 Mich 750, 764-765; 597 NW2d 130 (1999). Because defendant did not indicate that he wanted to testify, no clear or obvious error occurred. Moreover, we have reviewed his affidavit in support of the motion for new trial, which includes the account that he asserts he would have shared with the jury. He contends that he could not hear the police siren because of his loud car stereo, but he does not explain why he did not notice the squad car's flashing lights as it followed less than a car length behind his vehicle. His claim that he stopped as soon as he noticed the officer is implausible. Therefore, we are not persuaded that his testimony would have affected the outcome of the proceedings, as necessary to avoid forfeiture of the error under *Carines*. *Id.*

Defendant correctly notes that the record does not show that he waived his right to testify. However, an on-the-record waiver of the right to testify is not required. *People v Harris*, 190 Mich App 652, 661-662; 476 NW2d 767 (1991). Defendant claims that trial counsel was ineffective for failing to advise defendant of his right to testify on his own behalf. Because defendant did not move for an evidentiary hearing pursuant to *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973), this Court's review is limited to errors apparent on the record. *People v Williams*, 223 Mich App 409, 414; 566 NW2d 649 (1997). The record does not indicate whether trial counsel advised defendant of his right to testify. Defendant's affidavit in support of his motion for new trial does not address counsel's advice nor does it assert that defendant was unaware of his right to testify. Therefore, defendant has failed to establish the factual predicate for his claim. *People v Hoag*, 460 Mich 1, 6-7; 594 NW2d 57 (1999). In any event, given the implausibility of the account that he claims he would have presented if he had testified, he has not show a reasonable probability that, but for counsel's claimed error, the result of the proceeding would have been different. *People v Toma*, 462 Mich 281, 302-303; 613 NW2d 694 (2000). Therefore, we reject his claim that he was denied the effective assistance of counsel.

Affirmed.

/s/ Michael J. Kelly  
/s/ Kirsten Frank Kelly  
/s/ Douglas B. Shapiro