

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND WHITE A/K/A RAYMOND
ERMELING,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50496

FILED

APR 14 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a jury verdict, of two counts of trafficking in a controlled substance. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. The district court adjudicated appellant Raymond White a habitual criminal and sentenced him to serve two concurrent prison terms of 5 to 20 years.

White contends that the district court erred by allowing him to be present during voir dire while attired in prison clothes. In support of this contention, White cites to the United States Supreme Court's decision in Estelle v. Williams.¹

In Estelle, the defendant, prior to trial, asked a prison officer for his civilian clothes, but the request was denied.² Consequently, at trial, the defendant appeared "in clothes that were distinctly marked as

¹425 U.S. 501 (1976).

²Id. at 502.

prison issue.”³ However, the defendant did not object to the prison attire at trial.⁴ The Supreme Court held that:

[A]lthough the State cannot, consistently with the Fourteenth Amendment, compel an accused to stand trial before a jury while dressed in identifiable prison clothes, the failure to make an objection to the court as to being tried in such clothes, for whatever reason, is sufficient to negate the presence of compulsion necessary to establish a constitutional violation.⁵

The Estelle Court further observed “that the particular evil proscribed is compelling a defendant, against his will, to be tried in jail attire.”⁶

Here, prior to jury selection and outside the presence of the jury venire, the following colloquy occurred:

THE COURT: I’ve been informed that you are a little displeased, for one reason or another.

THE DEFENDANT: For some reason, the Sergeant downstairs said they brought clothes over there for me. They don’t know how to spell my name. That’s why they didn’t give me my clothes.

I’ll go to trial like this. I don’t have a problem with that.

THE COURT: I don’t know what other difficulties we may have.

THE DEFENDANT: None.

³Id.

⁴Id.

⁵Id. at 512-13.

⁶Id. at 507.

On the second day of trial, White wore civilian clothes. He acknowledged, outside the presence of the jury, that he chose not to wear the civilian clothes that were offered to him on the first day of trial.

Under these circumstances, we conclude that White was not compelled to be tried in prison clothes and that his constitutional rights were not violated. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

Maupin

J.

Maupin

Cherry

J.

Cherry

Saitta

J.

Saitta

cc: Hon. Donald M. Mosley, District Judge
Mayfield, Turco & Gruber
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk