

Order

Michigan Supreme Court
Lansing, Michigan

April 11, 2025

Elizabeth T. Clement,
Chief Justice

167862

Brian K. Zahra
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 167862
COA: 366045
Kent CC: 22-003006-FC

KHAVAREE DESHAWN NASH,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the October 14, 2024 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

THOMAS, J. (*concurring*).

“[C]ourts must be alert to factors that may undermine the . . . fact-finding process” and “carefully guard against dilution of the principle that guilt is to be established by probative evidence” *Estelle v Williams*, 425 US 501, 503 (1976); see also *People v Shaw*, 381 Mich 467, 473 (1969) (“ ‘No insinuations, indications or implications suggesting guilt should be displayed before the jury, other than admissible evidence and permissible argument.’ ”), quoting *Brooks v Texas*, 381 F2d 619, 624 (CA 5, 1967). For this reason, the United States Supreme Court made clear that a court may not compel a defendant to stand trial in prison clothing. *Estelle*, 425 US at 512. The Court explained that doing so denies the defendant a fair trial by placing an implicit statement of guilt in front of the jury while “further[ing] no essential state policy.” *Id.* at 503-505. This much is clear.

However, there is a significant gap regarding prison clothing worn by incarcerated witnesses. Other states have filled the gap in their own jurisdictions; most agree that a defendant should not be compelled to have their incarcerated witnesses testify in prison clothing, see 1 ALR7th, art 5; see also 2 Wharton’s Criminal Evidence (15th ed, October 2024 update), § 10:11, as does the American Bar Association, see ABA Standards for Criminal Justice: Discovery and Trial by Jury (3d ed), Standard 15-3.2(b), p 185. The Nevada Supreme Court explained the reasons behind this rule in *Hightower v State*:

[R]equiring an incarcerated defense witness to appear in prison clothing may prejudice the accused by undermining the witness’s credibility in an impermissible manner. Moreover, the jurors may believe a defense witness associated with the accused is putatively guilty and view the defendant as guilty by association. And absent unusual circumstances, no state interest is furthered by requiring an incarcerated witness to testify in prison clothing.

While *White* [*v State*, 105 Nev 121 (1989)] correctly states that defense witnesses are not cloaked in the accused’s presumption of innocence, the practice of requiring an incarcerated witness to appear at trial in jail garb may nonetheless prejudice a defendant affecting his constitutional right to a fair trial. [*Hightower v State*, 123 Nev 55, 58-59 (2007) (quotation marks, citations, and brackets omitted).]

There is also reason to consider such a rule for prosecution witnesses, as the defendant asked us to do here. While injury to a prosecution witness’s credibility might not harm the defendant in most cases, it still risks the same “injury of guilt by association” where the witness is “perceived to be closely associated with” the defendant. *Carney v State*, 158 So 3d 706, 709 (Fla App, 2015). A jury could consider that the defendant is friends with and associates with apparent criminals to conclude that the defendant is also a criminal. For this reason, at least two courts have extended the rules of *Estelle* and *Hightower* to at least some prosecution witnesses. See *id.*; *State v Kuchera*, 198 NJ 482, 499-501 (2009).

I do not dissent from my colleagues’ denial of leave in this case. Rather, I write separately to highlight these important issues we should reach in an appropriate case.



s0408

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 11, 2025

Clerk