ZARELLA, J., dissenting. A trial court commits an error of constitutional magnitude when it requires a criminal defendant to appear in prison clothing at trial over the defendant's objection. In virtually every case, however, that error is readily identifiable and, therefore, properly reviewed on appeal under harmless error analysis. Although the inherently prejudicial nature of the error often will merit reversal of a defendant's conviction, in some cases, the circumstances will lead to the conclusion that the error, while serious, was nonetheless harmless. For that reason, I disagree with the majority's approach to deciding this case pursuant to this court's inherent supervisory authority. The majority fails to explain why it is necessary to resort to our supervisory authority for this particular error, instead of following the precedent of this court and the United States Supreme Court dictating that trial errors resulting in an identifiable harm are to be reviewed under harmless error analysis.

In the present case, the elements of the crime and facts of the case necessarily informed the jury that the defendant, Irvin D. Rose, was incarcerated at the time the crime was committed, the defendant introduced evidence that he was incarcerated when the crime was committed, and the state presented overwhelming evidence of the defendant's guilt. Thus, under the harmless error doctrine, I conclude that the state has demonstrated that the defendant's appearance throughout trial in prison clothing, although an error of constitutional magnitude, was harmless beyond a reasonable doubt. Accordingly, I would reverse the judgment of the Appellate Court and reinstate the defendant's conviction. I therefore respectfully dissent.

The majority thoroughly recites the facts of the case, and I repeat the essential facts. The defendant was incarcerated in a correctional center following his inability to post bail for a separate, charged offense. While housed in isolation in the correctional center's hospital wing, the defendant tore open his mattress, removed its stuffing and crawled inside. Two correction officers, Brian Guerrera and Scott Whiteley, were dispatched to order the defendant to exit the mattress and then to remove the mattress from the defendant's jail cell. The defendant complied initially with the officers' instructions. As the officers were leaving the defendant's cell, the defendant spat at Guerrera. The defendant's saliva came in contact with Guerrera's face and chest. Guerrera then reported to a correctional center nurse and completed medical and incident reports. On the basis of these facts, the defendant was charged with assault of public safety personnel in violation of General Statutes (Sup. 2006) § 53a-167c (a) (5).[1]

Prior to the jury selection process, the defendant, who represented himself, objected to appearing in his prison attire. The trial court overruled the defendant's objection, primarily on the ground that the jury would be aware of the defendant's incarceration status at the time the crime was committed because of the nature of the charges.[2] During jury selection, however, the court instructed the members of the two venire panels not to consider the defendant's attire. The court gave no further instruction during the trial regarding the defendant's attire.

During trial, both the state and the defendant introduced direct and indirect evidence of the defendant's incarceration status at the time the charged offense was committed. Specifically, the state called three witnesses, including Guerrera and Whiteley, who testified that the incident occurred in a correctional center. The defendant also elicited testimony from these witnesses to the same effect and introduced into evidence voluminous exhibits that referred to his incarceration status. At no point during the trial did the state refer to the defendant's attire or suggest that the defendant's incarceration status should factor into the jury's determination of guilt.[3] The jury found the defendant guilty of violating General Statutes (Sup. 2006) § 53a-167c (a) (5), and the defendant appealed to the Appellate Court from the judgment of conviction. The Appellate Court reversed the defendant's conviction, concluding that the defendant had been denied a fair trial because he had been compelled to stand trial in identifiable prison attire. *State* v. *Rose*, 112 Conn. App. 324, 331–32, 342, 963 A.2d 68 (2009). In doing so, the Appellate Court rejected the state's argument that the trial court's error should have been reviewed under harmless error analysis. Id., 340. For the reasons that follow, I disagree with the Appellate Court's reasoning that harmless error analysis does not apply to the error in this case. I also disagree with the majority's decision to decide this case pursuant to this court's supervisory authority.

I

In order to determine whether the Appellate Court properly reversed the defendant's conviction on the ground that the trial court impermissibly had compelled the defendant to stand trial in prison attire, two threshold issues must be addressed:[4] first, whether the alleged impropriety actually constitutes error; and, second, if the trial court did commit error, whether that error is appropriately reviewed under harmless error analysis, or whether it is a structural error requiring automatic reversal. Numerous jurisdictions have addressed these issues, and they provide a thorough documentation of the state of the law.

The question of whether the trial court committed error when it compelled the defendant to appear in

prison attire at trial is easily answered. The United States Supreme Court held, in *Estelle* v. *Williams*, 425 U.S. 501, 96 S. Ct. 1691, 48 L. Ed. 2d 126 (1976), that "[a] [s]tate cannot, consistently with the [f]ourteenth [a]mendment, compel an accused to stand trial before a jury while dressed in identifiable prison clothes . . . ." Id., 512.[5] Subsequent case law has consistently reaffirmed and applied this holding, including this court in *State* v. *Williamson*, 206 Conn. 685, 704–705, 539 A.2d 561 (1988). Thus, because the defendant timely and properly objected to appearing at trial in prison attire, the trial court committed an error of constitutional magnitude by overruling the defendant's objection.[6]

Having concluded that the trial court committed an error of constitutional magnitude, it must be determined whether that error properly is reviewed pursuant to our harmless error doctrine, or whether it is structural error. I begin by noting that "[t]he harmless error doctrine is essential to preserve the principle that the central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence, and promotes public respect for the criminal process by focusing on the underlying fairness of the trial. *Arizona* v. *Fulminante*, [499 U.S. 279, 308, 111 S. Ct. 1246, 113 L. Ed. 2d 302 (1991)]; see also *Rose* v. *Clark*, 478 U.S. 570, 577, 106 S. Ct. 3101, 92 L. Ed. 2d 460 (1986). *State* v. *Anderson*, 255 Conn. 425, 444, 773 A.2d 287 (2001). In contrast, the [United States] Supreme Court has noted that there is a very limited class of cases involving error that is structural, that is to say, error that transcends the criminal process. *Johnson* v. *United States*, 520 U.S. 461, 468, 117 S. Ct. 1544, 137 L. Ed. 2d 718 (1997); [see] *Sullivan* v. *Louisiana*, 508 U.S. 275, [280–81] 113 S. Ct. 2078, 124 L. Ed. 2d 182 (1993) (defective reasonable doubt instruction); *Vasquez* v. *Hillery*, 474 U.S. 254, [263–64] 106 S. Ct. 617, 88 L. Ed. 2d 598 (1986) (racial discrimination in selection of grand jury); *Waller* v. *Georgia*, 467 U.S. 39, [49–50] 104 S. Ct. 2210, 81 L. Ed. 2d 31 (1984) (denial of public [hearing on motion to suppress]); *McKaskle* v. *Wiggins*, 465 U.S. 168, [177 n.8] 104 S. Ct. 944, 79 L. Ed. 2d 122 (1984) (denial of self-representation at trial) . . . *Tumey* v. *Ohio*, 273 U.S. 510, [535] 47 S. Ct. 437, 71 L. Ed. 749 (1927) (biased trial judge)." (Citation omitted; internal quotation marks omitted.) *State* v. *Lopez*, 271 Conn. 724, 733, 859 A.2d 898 (2004).

"In most cases involving constitutional violations . . . this court applies harmless error analysis. See, e.g., *State* v. *Carpenter*, 275 Conn. 785, 832–33, 882 A.2d 604 (2005) (admission of statements in violation of constitutional right to confrontation was harmless error), cert. denied, 547 U.S. 1025, 126 S. Ct. 1578, 164 L. Ed. 2d 309 (2006); *State* v. *Padua*, 273 Conn. 138, 166–67, 869 A.2d 192 (2005) (although improper jury instruction violated due process rights, error [was]

harmless); *State* v. *Montgomery*, 254 Conn. 694, 715–18, 759 A.2d 995 (2000) (admission of evidence concerning defendant's silence was harmless error despite violation of due process rights)." *State* v. *Brown*, 279 Conn. 493, 505–506, 903 A.2d 169 (2006); see also *Small* v. *Commissioner of Correction*, 286 Conn. 707, 723, 946 A.2d 1203 ("It is well settled that a reviewing court evaluates a trial error of constitutional magnitude under the harmless error standard . . . . [A] reviewing court must determine whether the state has proved that the unconstitutional error was harmless beyond a reasonable doubt." [Citations omitted.]), cert. denied sub nom. *Small* v. *Lantz*, 555 U.S. 975, 129 S. Ct. 481, 172 L. Ed. 2d 336 (2008).

In rare instances, however, harmless error analysis may be inappropriate, as the error is structural in nature. "Structural [error] cases defy analysis by harmless error standards because the entire conduct of the trial, from beginning to end, is obviously affected . . . . These cases contain a defect affecting the *framework* within which the trial proceeds, rather than simply an error in the trial process itself. . . . Such errors infect the entire trial process . . . and necessarily render a trial fundamentally unfair . . . . Put another way, these errors deprive defendants of basic protections without which a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence . . . and no criminal punishment may be regarded as fundamentally fair."[7] (Emphasis added; internal quotation marks omitted.) *State* v. *Lopez*, supra, 271 Conn. 733–34. Compare *State* v. *Murray*, 254 Conn. 472, 496–99, 757 A.2d 578 (2000) (improper substitution of alternate juror after deliberations had begun was structural error because reviewing court could not assess effect of impropriety on outcome of trial), with *State* v. *Brown*, supra, 279 Conn. 510–11 ("any prejudice that the defendant may have suffered in the presentation of his defense as a result of the denial of counsel at the probable cause hearing [was] similarly discernable [on] appeal" and therefore did not constitute structural error).

Turning to the specific error at issue in the present case, I conclude that compelling a defendant to appear in prison attire is not structural error and, therefore, properly may be reviewed under harmless error analysis.[8] The harm resulting from the trial court's error is readily identifiable: A juror might associate prison attire with an increased likelihood that the defendant had committed the crime. In that sense, the harm is similar to that caused by requiring a defendant to remain visibly shackled or admitting unduly prejudicial testimony. Even though these errors will result in prejudice to some degree, and also may give rise to a constitutional violation, a reviewing court can review the record and determine whether other aspects of the trial minimized the prejudicial effect of the error.

This approach aligns with the overwhelming weight of authority on the issue. "Although the applicability of harmless error analysis to circumstances in which a defendant is impermissibly compelled to attend trial in prison attire has not been addressed directly by [the Appellate] [C]ourt or [this] [c]ourt, state and federal appellate courts confronting this issue have approved of applying such analysis. . . . [T]he United States Court of Appeals for the Second Circuit in *United States* v. *Hurtado*, 47 F.3d 577, 581 (2d Cir.), cert. denied, 516 U.S. 903, 116 S. Ct. 266, 133 L. Ed. 2d 188 (1995), declared that [e]ven [when] a defendant is compelled to wear prison clothes at trial . . . that constitutional error is subject to harmless error analysis. The United States Court of Appeals for the Seventh Circuit has applied harmless error analysis in this context as well. See *Whitman* v. *Bartow*, 434 F.3d 968, 971 (7th Cir.), cert. denied, 547 U.S. 1199, 126 S. Ct. 2883, 165 L. Ed. 2d 908 (2006); see also *Fernandez* v. *United States*, 375 A.2d 484, 485–86 (D.C. 1977) (applying harmless error when defendant compelled to attend trial in prison attire). The Court of Appeals of Maryland in *Knott* v. *State*, 349 Md. 277, 292, 708 A.2d 288 (1998), applied harmless error analysis to this issue in factually comparable circumstances, as did the Supreme Court of Pennsylvania in *Commonwealth* v. *Moore*, 534 Pa. 527, 544–45, 633 A.2d 1119 (1993), cert. denied, 513 U.S. 1114, 115 S. Ct. 908, 130 L. Ed. 2d 790 (1995) . . . the Supreme Court of Louisiana in *State* v. *Brown*, 585 So. 2d 1211, 1213 (La. 1991) . . . [and the Illinois Appellate Court in] *People* v. *Steinmetz*, 287 Ill. App. 3d 1, 6–7, 678 N.E.2d 89 . . . appeal denied, 173 Ill. 2d 542, 684 N.E.2d 1341 (1997)." (Internal quotation marks omitted.) *State* v. *Rose*, supra, 112 Conn. App. 344–45 (*Foti*, *J.*, concurring in part and dissenting in part).

In that connection, I note that "there is [United States] Supreme Court precedent holding that harmless error analysis should apply in cases [in which] the courtroom atmosphere hints at a defendant's dangerousness or guilt. . . . *Ruimveld* v. *Birkett*, 404 F.3d 1006, 1013 (6th Cir. 2005). [Quoting] *Holbrook* v. *Flynn*, 475 U.S. 560, 572, 106 S. Ct. 1340, 89 L. Ed. 2d 525 (1986), the Sixth Circuit [Court of Appeals] concluded that [t]he [United States Supreme] Court [has] made clear that a particular trial practice ought to be examined as to whether it prejudiced the defendant's case. *Ruimveld* v. *Birkett*, supra, 1013." (Internal quotation marks omitted.) *State* v. *Rose*, supra, 112 Conn. App. 345 (*Foti*, *J.*, concurring in part and dissenting in part); see *Deck* v. *Missouri*, 544 U.S. 622, 630, 632–35, 125 S. Ct. 2007, 161 L. Ed. 2d 953 (2005) (observing that shackling is inherently prejudicial procedure but nevertheless subject to harmless error review); see also *Ruimveld* v. *Birkett*, supra, 1013 ("it cannot be said that the [United States] Supreme Court has held squarely that shackling is a practice so prejudicial as to preclude all harmless

error review"). Indeed, although the court in *Estelle* did not decide the issue directly; see footnote 5 of this opinion; it noted that "there may be some constitutional errors which in the setting of a particular case are so unimportant and insignificant that they may, consistent with the [f]ederal [c]onstitution, be deemed harmless, not requiring the automatic reversal of the conviction. . . .

"In other situations, when, for example, *the accused is being tried for an offense committed in confinement*, or in an attempted escape, courts have refused to find error in the practice. In *United States ex rel. Stahl* v. *Henderson*, 472 F.2d 556 [(5th Cir.)], cert. denied, 411 U.S. 971 [93 S. Ct. 2166, 36 L. Ed. 2d 694] (1973), the [Fifth Circuit] Court of Appeals declined to overturn a conviction [when] the defendant, albeit tried in jail clothes, was charged with having murdered another inmate while confined in prison. No prejudice can result from seeing that which is already known. [Id., 557]. . . .

"[A conclusion of harmless error] may be appropriate [when] the defendant is on trial for an offense allegedly committed while he was in prison, because the jury would learn of his incarceration in any event." (Citation omitted; emphasis added; internal quotation marks omitted.) *Estelle* v. *Williams*, supra, 425 U.S. 507.

I therefore conclude that the error that results by compelling a criminal defendant to appear in prison attire during trial will almost always rise to the level of an error of constitutional magnitude. Nevertheless, the prejudice that results from such an error is readily identifiable and reviewable on appeal, and, thus, the error properly is reviewed under harmless error analysis.

II

In order to determine whether the defendant's conviction should be reinstated, the state must demonstrate that the error in this case was harmless beyond a reasonable doubt. As the following discussion explains, I conclude that it was. In brief, the elements of the crime charged required the state to establish that the victim was a correction officer and was engaged in the line of duty. In other words, the state had to, and did, introduce evidence that would directly establish that the defendant was incarcerated when the crime occurred.[9] Thus, if the defendant had not been clothed in prison attire, the jury would nonetheless have learned of the defendant's incarceration status.[10] This aspect of the case, coupled with the copious and essentially uncontested evidence of the defendant's guilt, rendered the error harmless.

The standard of review for an error of constitutional magnitude is well settled. "Whether a constitutional violation is harmless in a particular case depends [on] the totality of the evidence presented at trial. . . . If

the evidence may have had a tendency to influence the judgment of the jury, it cannot be considered harmless." (Internal quotation marks omitted.) *State* v. *Hedge*, 297 Conn. 621, 654, 1 A.3d 1051 (2010). In such cases, the state bears the burden of proving that the error was harmless beyond a reasonable doubt. See, e.g., *State* v. *Randolph*, 284 Conn. 328, 377, 933 A.2d 1158 (2007).

There is no question that the state offered sufficient evidence to support the defendant's conviction. "The cumulative impact of the evidence in this case was sufficient for the jury to find beyond a reasonable doubt that the defendant was guilty of assault on a department [of correction] employee. There was evidence that Guerrera was in uniform at the time of the incident, that he was carrying out his lawful duty in an orderly manner, that the defendant knew Guerrera was a department [of correction] employee and that the defendant spat on Guerrera. . . . [S]pitting itself is a physical act, as it is the application of force to the victim's body . . . . Spitting on another person is almost universally acknowledged as contemptuous and is calculated to incite others to act in retaliation. . . . Also, it is irrelevant that Guerrera's duties as [a] cover down officer were essentially complete at the time of the assault because under [General Statutes (Sup. 2006)] § 53a-167c, [t]he [defendant's] act . . . does not have to be wholly or partially successful . . . [nor must it] be such as to defeat or delay the performance of a duty in which the officer is then engaged. . . .

"[T]he jury reasonably could have found that when the defendant spat on Guerrera's face and chest, he intended not only that act, but also to prevent Guerrera from performing his duties. . . . [T]he evidence was sufficient for the jury to find beyond a reasonable doubt that the defendant had the specific intent to prevent Guerrera from performing his duty and, therefore, that the evidence was sufficient to support the conviction of assault of a department [of correction] employee." (Citations omitted; internal quotation marks omitted.) *State* v. *Rose*, supra, 112 Conn. App. 330–31.

Although evidence sufficient to sustain a conviction will not necessarily lead to a conclusion that the evidence was sufficient to render a trial error harmless, in this case, the state presented ample, independent and overwhelming evidence of the defendant's guilt. "There was uncontested documentary and testimonial evidence that . . . Guerrera was an identifiable employee of the department of correction in the lawful performance of his duty when the assault took place. The state presented the testimony of two eyewitnesses to the assault on Guerrera. Each testified that the defendant spat on Guerrera during the removal of the damaged mattress from the defendant's cell.[11] Also, there was . . . extensive documentary evidence before the jury, [comprising] some sixty plus pages of department

of correction reports, detailing the assault on Guerrera and subsequent events involving the defendant's incarceration." Id., 348–49 n.6 (*Foti*, *J.*, concurring in part and dissenting in part); see *State* v. *Yates*, 174 Conn. 16, 18–19, 381 A.2d 536 (1977) (potential bias against defense witnesses testifying in prison attire was ameliorated by their own testimony regarding their incarceration); cf. *State* v. *Pannone*, 9 Conn. App. 111, 120, 516 A.2d 1359 (1986) ("[T]he defendant himself took the stand and admitted that he had been convicted during the year before the trial of a crime carrying a penalty of more than one year of imprisonment. This admission had the effect of nullifying any prejudicial influence [that] the court's action might have engendered [when it allowed uniformed correction officers to accompany the defendant during his trial]."), cert. denied, 202 Conn. 804, 519 A.2d 1208 (1987).

Lastly, the trial court instructed all jurors, as venirepersons during the jury selection process, not to consider the defendant's attire in deciding the case. Although it would have been preferable for the trial court to have repeated this instruction during its final charge, jurors are presumed to follow instructions given during voir dire in the absence of any indication to the contrary. See *State* v. *Rodriguez*, 210 Conn. 315, 332–33, 554 A.2d 1080 (1989).

Accordingly, although the trial court improperly compelled the defendant to appear before the jury in prison attire, that impropriety was rendered harmless by the overwhelming evidence presented by the state and by virtue of the elements of the charged crime. The judgment of the Appellate Court should be reversed, and the defendant's conviction should be reinstated.

III

Notwithstanding the foregoing facts, reasoning and analysis, the majority elects to uphold the Appellate Court's reversal of the defendant's conviction through the exercise of this court's inherent supervisory authority over the administration of justice. Rather than deciding whether the impropriety in this case properly is reviewed under harmless error analysis, the majority announces a rule that *any* conviction of a criminal defendant who was compelled to stand trial in identifiable prison clothing in violation of his or her constitutional rights will be reversible per se. The effect of this rule is to transform every constitutional error that results from compelling a defendant to stand trial in prison attire into structural error. I disagree with the majority's approach because it runs counter to this court's and the United States Supreme Court's principle that errors, even of constitutional magnitude, should be reviewed under a harmless error analysis unless such an analysis is not possible.[12] Although the majority identifies the serious constitutional concerns that are implicated by requiring a defendant to appear in prison

attire at trial, it does not explain why this type of error should trigger the exercise of our supervisory authority, instead of being subject to harmless error analysis. Thus, in my view, the majority fails to demonstrate why the concerns presented by the error in the present case justify departing from this court's long-standing view that we should invoke our supervisory authority only sparingly.[13] See, e.g., *State* v. *Wade*, 297 Conn. 262, 296, 998 A.2d 1114 (2010) ("Our supervisory powers are not a last bastion of hope for every untenable appeal. They are an extraordinary remedy to be invoked only when circumstances are such that the issue at hand, while not rising to the level of a constitutional violation, is nonetheless of utmost seriousness, not only for the integrity of a particular trial but also for the perceived fairness of the judicial system as a whole. . . . *Constitutional, statutory and procedural limitations are generally adequate to protect the rights of the defendant and the integrity of the judicial system. Our supervisory powers are invoked only in the rare circumstance* [*in which*] *these traditional protections are inadequate to ensure the fair and just administration of the courts.*" [Emphasis added; internal quotation marks omitted.]).

I also disagree with the majority's reasoning that a decision not to exercise our supervisory authority in the present case "would convey a most damaging message" to the public that this court does not value a criminal defendant's constitutional rights. The majority's reasoning, taken to its logical end, suggests that any error, even when harmless, should result in the reversal of a defendant's conviction if the nature of the error is one that implicates a constitutional right. Yet, harmless error analysis is routinely applied in the context of errors that implicate constitutional rights. See, e.g., *State* v. *Mitchell*, 296 Conn. 449, 459–60, 996 A.2d 251 (2010) (harmless error analysis applies to admission into evidence of statements taken in violation of *Miranda*[14]). The majority, through its rationale for invoking this court's supervisory authority in this case, indirectly calls into question the appropriateness of reviewing any constitutional error under harmless error analysis. I therefore cannot join the majority's decision to rely on this court's supervisory authority and forgo harmless error analysis.

Finally, I fail to see how upholding the reversal of the defendant's conviction in this case furthers the majority's stated goal of "send[ing] a strong message to the public that this court and the judiciary that it supervises accord the highest importance to basic fairness and to the presumption of innocence." The state presented overwhelming evidence in this case of the defendant's guilt, and the defendant similarly offered evidence that would negate the harm that resulted from his being compelled to stand trial in prison attire.[15] Thus, even if it is assumed, arguendo, that a categorical rule

of reversibility is *generally* appropriate, the majority does not address why reversal is appropriate in this specific case. Put differently, although the majority raises concerns regarding the prejudicial effect of a defendant's appearance before a jury in prison attire, the majority does not identify any prejudice in the present case that would require the reversal of the defendant's conviction. I have faith that this court's determination that an error occurred in the present case is sufficient to put trial courts on notice that requiring a defendant to appear at trial in prison attire is unacceptable. We need not highlight, in my view, the trial court's error by relying on our supervisory authority and unnecessarily requiring the state to expend time and resources on a new trial for the defendant in order to cure an error that is undoubtedly harmless beyond a reasonable doubt. I therefore strongly disagree with the result that the majority reaches.

The trial court committed an error of constitutional magnitude in the present case by compelling the defendant, over his objection, to appear at trial in prison attire. This error, however, is not structural and, thus, properly is reviewed under harmless error analysis. The state has met its burden of demonstrating beyond a reasonable doubt that, under the facts and circumstances of this case, the error was harmless. Nevertheless, the majority departs from our long-standing principle that we review trial errors, even errors of constitutional magnitude, under harmless error analysis. The majority instead invokes our sparingly used supervisory authority to establish a per se rule of reversibility and to uphold the reversal of the defendant's conviction. I believe this approach is unsupported by precedent and potentially damaging to the effectiveness of our judicial system. Accordingly, I respectfully dissent.

[1] General Statutes (Sup. 2006) § 53a-167c (a) provides in relevant part: "A person is guilty of assault of public safety . . . personnel when, with intent to prevent a reasonably identifiable . . . employee of the Department of Correction . . . from performing his or her duties, and while such . . . employee . . . is acting in the performance of his or her duties . . . (5) such person throws or hurls, or causes to be thrown or hurled, any bodily fluid including, but not limited to . . . saliva at such . . . employee . . . ."

[2] The trial court did not distinguish between the jury's knowledge that the defendant was incarcerated when the crime was committed as opposed to the defendant's appearance at trial in prison garb. See footnote 6 of this opinion.

[3] It appears that the sole reference to the defendant's attire before the jury occurred when the state's witness identified the defendant in the courtroom as the individual dressed in " '[a] yellow jumper.' " *State* v. *Rose*, 112 Conn. App. 324, 334, 963 A.2d 68 (2009).

[4] Because the Appellate Court reversed the defendant's conviction primarily on the basis of its legal conclusion that the trial court committed an error not susceptible to harmless error analysis, I review the Appellate Court's decision de novo. See, e.g., *Wiseman* v. *Armstrong*, 295 Conn. 94, 106, 989 A.2d 1027 (2010).

[5] In *Estelle*, the United States Supreme Court ultimately concluded that no constitutional violation occurred because the defendant never objected to being required to wear prison attire. See *Estelle* v. *Williams*, supra, 425 U.S. 512–13. Thus, the defendant could not claim that he was compelled in violation of the fourteenth amendment. See id. For this reason, the court, although recognizing the apparent relevance of the harmless error doctrine

to the type of error at issue in *Estelle*; see id., 506–509; did not explicitly decide whether the doctrine applied in that case.

[6] Additionally, the trial court improperly conflated the defendant's incarceration status at the time the crime was committed with the defendant's appearance at trial in prison attire. The fact that the jury ultimately would learn that the defendant was previously incarcerated does not mean that it was proper for him to appear at trial in prison attire, which alerted the jury to his incarceration status at the time of trial. Indeed, it was no more proper for the trial court to compel the defendant to stand trial in prison attire than it would be for the state to introduce a criminal defendant's prior criminal history in order to show the defendant's criminal propensity. See, e.g., *State* v. *Collins*, 299 Conn. 567, 582, 10 A.3d 1005 (2011) ("As a general rule, evidence of prior misconduct is inadmissible to prove that a criminal defendant is guilty of the crime of which the defendant is accused. . . . Such evidence cannot be used to suggest that the defendant has a bad character or a propensity for criminal behavior." [Internal quotation marks omitted.]).

[7] "For example, in *State* v. *Peeler*, 265 Conn. 460, 475–76, 828 A.2d 1216 (2003), cert. denied, 541 U.S. 1029, 124 S. Ct. 2094, 158 L. Ed. 2d 710 (2004), we concluded that the improper denial of the defendant's constitutional right to counsel of choice during the trial was not subject to harmless error review because it constituted a fundamental component of the sixth amendment right to a fair trial. In *State* v. *Murray*, 254 Conn. 472, 499, 757 A.2d 578 (2000), we concluded that the improper substitution of an alternate juror after deliberations had commenced constituted structural error because of [t]he inability to assess the effect of this impropriety on the defendant's trial . . . ." (Internal quotation marks omitted.) *State* v. *Brown*, supra, 279 Conn. 505.

[8] With regard to the violation of Practice Book § 44-7, I note that this court also ordinarily reviews violations of the rules of practice under harmless error analysis. See, e.g., *Wiseman* v. *Armstrong*, 295 Conn. 94, 110, 989 A.2d 1027 (2010) ("[H]armless error review has been the standard of review historically applied in this state to claims of violation of the rules of practice. Our courts [o]rdinarily . . . apply a harmless error analysis in determining whether a violation of a rule of practice amounts to reversible error." [Internal quotation marks omitted.]). Because I conclude that the constitutional error in this case should be reviewed pursuant to harmless error analysis, I see no reason to apply a different standard to a violation of the rules of practice. For the reasons set forth in part II of this opinion, I further conclude that the violation of Practice Book § 44-7 in this case was harmless beyond a reasonable doubt.

[9] The jury was informed of the elements of the crime through the information, specifically, that it involved an offense committed against an on-duty correction officer with the intent to prevent the correction officer from fulfilling his duties. The jury heard testimony from the correction officer who was the alleged victim of the charged offense.

[10] Nevertheless, I do not mean to imply that these circumstances justify the trial court's actions in the present case.

[11] Specifically, Guerrera testified that he had been wearing an identifiable correction officer uniform, that Whiteley had informed the defendant that they were entering his cell to remove the mattress, and that they had been acting pursuant to their supervisor's orders. Guerrera also testified in great detail regarding the defendant's actions, specifically, the location of the officers within the defendant's cell and the defendant's position within the cell when he allegedly spat at Guerrera.

Guerrera reiterated his previous testimony in response to the defendant's questions on cross-examination. Additionally, Guerrera read into evidence, as a full exhibit, his statement to state police following the incident with the defendant, which included numerous references to the defendant's incarceration and referred to the defendant as "Inmate Rose . . . ." The defendant also asked Guerrera if the defendant was in the custody of the department of correction when the charged offense occurred, to which Guerrera responded affirmatively. Guerrera, at the prompting of the defendant, read into the record a disciplinary report prepared after the defendant's spitting incident, which also referred to the defendant as "Inmate Rose . . . ." Guerrera then explained that a disciplinary report functions as a means for an internal investigator to determine if the inmate has committed a crime or crimes.

The state's second witness, Whiteley, corroborated Guerrera's testimony regarding the defendant's actions. Notably, Whiteley's testimony included

numerous references to the fact that the incident had occurred while the defendant was in a "cell" in a "prison facility . . . ." Subsequently, the defendant also offered a previously prepared incident report to Whiteley, who read it aloud in front of the jury. Again, this report included numerous references the defendant as "Inmate Rose . . . ."

The state's third and final witness, State Trooper Richard Henderson, testified that he had reported to an alleged incident between the defendant and Guerrera at a correctional center and that Guerrera was a correction officer.

In addition, the transcript of the defendant's trial reveals that the defendant engaged in extensive cross-examination of each of the state's witnesses. For example, the defendant's questioning of Whiteley concerned the specific, minute details of the incident and the accuracy of his memory. Reproduced in transcript form, this particular colloquy spans more than eight pages.

[12] For that reason, the majority's reliance on our supervisory authority also runs counter to other jurisdictions that have considered this issue. See part I of this opinion. Indeed, I have not found, and the majority does not refer to, *any* jurisdiction that has determined that a defendant's compelled appearance at trial in prison attire should be reviewed under anything other than harmless error analysis. Nor am I aware of any jurisdiction that has invoked its own supervisory authority to craft the rule that the majority does in the present case.

[13] Although the majority portrays the nature of the error in this case as uniquely worthy of per se reversal, I fail to comprehend how compelling a defendant to stand trial in prison attire is substantially different from compelling a defendant to appear shackled at trial without sufficient justification. In both situations, the jury is prejudiced by the constant reminder of the defendant's apparently criminal disposition. Indeed, shackling is arguably more prejudicial because the defendant not only may appear to be criminally predisposed but also more violent and dangerous. Nevertheless, this court never has held or suggested that improper shackling claims should not be subject to harmless error analysis. See *State* v. *White*, 229 Conn. 125, 145–46, 640 A.2d 572 (1994); *State* v. *Canty*, 223 Conn. 703, 719–20, 613 A.2d 1287 (1992); *State* v. *Tweedy*, 219 Conn. 489, 505–508, 584 A.2d 906 (1991). Moreover, the United States Supreme Court has endorsed harmless error review of improper shackling claims. See *Deck* v. *Missouri*, supra, 544 U.S. 635 ("[When] a court, without adequate justification, orders the defendant to wear shackles that will be seen by the jury, the defendant need not demonstrate actual prejudice to make out a due process violation. The [s]tate must prove beyond a reasonable doubt that the [shackling] error complained of did not contribute to the verdict obtained." [Internal quotation marks omitted.]).

[14] *Miranda* v. *Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

[15] The majority contends that the state merely provided sufficient, but not overwhelming, evidence regarding the defendant's intent to prevent Guerrera from performing his duties. I disagree. In addition to the extensive testimony of Guerrera and the state's two other witnesses, which provided direct evidence that the defendant intentionally spat at Guerrera; see footnote 11 of this opinion; the jury had available to it "[a]n incident report that was entered into evidence as a full exhibit [that] detail[ed] effectively the surrounding circumstances and events leading [up] to and immediately following the incident. Just prior to the incident, the defendant 'was naked in his cell due to [his] shoving his . . . gown and blanket underneath the cell door [sometime earlier and] was ripping the seam of the mattress.' This behavior led to the intervention by department of correction officers and the spitting incident . . . . After this incident, '[a]round ten minutes later, [the defendant] was pacing [in] his cell when suddenly he went to his cell door and started to urinate everywhere. A short time later . . . [the defendant] wet some toilet paper and tried to cover the camera monitor. . . . [H]e then climbed up the wall and shook the camera trying to break it. . . . [H]e [then] grabbed the wet toilet paper, climbed . . . up the wall again and placed it on the camera monitor.' The report goes on to indicate that another department of correction intervention ensued resulting in the physical restraint of the defendant." *State* v. *Rose*, supra, 112 Conn. App. 348 (*Foti*, *J.*, concurring in part and dissenting in part).

The testimony of the officers and these circumstantial facts lead to the conclusion that the jury determined that the defendant spat at Guerrera intentionally. See, e.g., *State* v. *Colon*, 272 Conn. 106, 338, 864 A.2d 666 (2004) ("[i]t is axiomatic that a fact finder may infer intent from the natural consequences of one's voluntary conduct" [internal quotation marks omitted]), cert. denied, 546 U.S. 848, 126 S. Ct. 102, 163 L. Ed. 2d 116 (2005). In

other words, the state's case was so strong that I can reasonably conclude that the jury reached this determination independently of any prejudice resulting from the defendant's appearance in prison attire. It also is worth noting that (1) the state's witnesses presented consistent testimony regarding the defendant's conduct, (2) the defendant did not testify or present any contradictory evidence, and (3) the defendant's trial strategy revolved almost entirely on attacking the credibility of the state's witnesses and other facts irrelevant to the charged crime. Thus, the only issue before the jury was whether to believe the state's witnesses and the exhibits offered by the state and the defendant, and the jury necessarily deemed those witnesses credible when it found the defendant guilty. I therefore disagree with the majority's contention that this is a difficult case in which to apply harmless error analysis.