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Court of Appeals
Division II
State of Washington
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96656-7

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

WILLIAM EDWARD LUNDSTROM,

Respondent.

ON DISCRETIONARY REVIEW FROM
THE COURT OF APPEALS, DIVISION II
Court of Appeals No. 49709-3-II
Clallam County Superior Court No. 16-1-00065-6

PETITION FOR REVIEW

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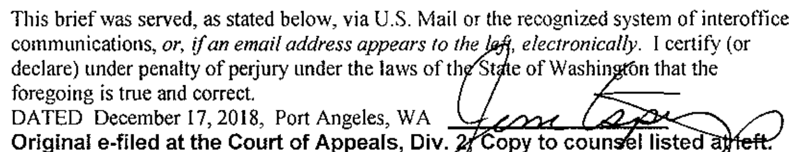

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DATED December 17, 2018, Port Angeles, WA
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I. IDENTITY OF RESPONDENT

The petitioner is the State of Washington. The petition is filed by Clallam County Deputy Prosecuting Attorney Jesse Espinoza.

II. COURT OF APPEALS DECISION

The State seeks review of the Court of Appeals published decision in *State v. Lundstrom*, No. 49709-3-II (Nov. 15, 2018), in which the Court held that Lundstrom's pretrial restraint violated due process "by failing to make an individualized inquiry into the necessity for pretrial restraints when Lundstrom took exception to the use of pretrial restraints." [1]

III. ISSUES PRESENTED FOR REVIEW

Whether criteria set forth in RAP 13.4(b) are met, and this Court should thus accept review of the decision of the Court of Appeals holding that the trial court violated the defendant's due process rights by requiring restraints without an individualized showing of their need in non-jury proceedings, where:

1. The Court of Appeals decision conflicts with the decisions of this Court in *State v. Damon,*[2] *State v. Hartzog,*[3] *State v. Finch,*[4] and

[1] *State v. Lundstrom*, 429 P.3d 1116, 1121 (Wn. App., 2018).

[2] *State v. Damon*, 144 Wn.2d 686, 692, 25 P.3d 418 (2001) (holding the trial court abused its discretion by relying upon a correction officer's concerns without a hearing in order to require the defendant to be held in restraints throughout his jury trial).

[3] *State v. Hartzog*, 96 Wn.2d 383, 400, 635 P.2d 694 (1981) (in a case where the trial

State v. Turner,[5] where restraints were used in jury or sentencing proceedings, by applying the principles outlined in those cases out of their proper context to non-jury proceedings thereby interfering with a court's "discretion to provide for courtroom security, in order to ensure the safety of court officers, parties, and the public" where there is no risk of prejudice to a defendant's rights to a fair trial; and

2. The Court of Appeals decision conflicts with the decisions of the Court of Appeals, Division 1, in *State v. Walker,*[6] by extending *Walker*, beyond its narrow holding, to mean that a hearing must be held to determine whether restraints are justified before they may be utilized in *all* court room proceedings, regardless of their

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court ordered the use of restraints during jury trial, holding that "[a] broad general policy of imposing physical restraints upon prison inmates charged with new offenses because they may be "potentially dangerous" is a failure to exercise discretion" but relying upon cases where an individualized showing of need for restraints is required before their use in proceedings before a jury).

[4] *State v. Finch*, 137 Wn.2d 792, 842–43, 975 P.2d 967 (1999) (citing to well established principles that prohibit the use of restraints without a showing of extraordinary circumstances in hearings before a jury or for sentencing).

[5] *State v. Turner*, 143 Wn.2d 715, 725, 23 P.3d 499 (2001) (quoting *Hartzog*, 96 Wn.2d at 396) ("It is fundamental that a trial court is vested with the discretion to provide for courtroom security, in order to ensure the safety of court officers, parties, and the public.").

[6] *State v. Walker*, 185 Wn. App. 790, 803, 344 P.3d 227 (2015) (holding "that it was within the trial court's sole discretion to determine whether Walker should be restrained during his sentencing hearing" and that "the record was sufficient to support the trial court's decision to maintain Walker's restraints during the hearing and does not show that Walker was prejudiced thereby.").

nature; and

3. The petition involves a question of law under the U.S. Constitution because the Court of Appeals' holding extends the constitutional right to be free from restraint before the court in jury proceedings to *all* courtroom proceedings including all non-jury pre-trial hearings when the U.S. Supreme Court has made it clear that such right has never been held to apply in non-jury proceedings; and

4. The petition involves an issue of substantial public interest that should be determined by this Court because the decision affects the policies and practices of courtrooms and jail facilities across the State of Washington that for years had been operating under constitutional norms to promote safety and efficiency in their respective courtrooms?

IV. STATEMENT OF THE CASE

On Feb. 22, 2016, the State filed an information charging Lundstrom with two counts of possession of a controlled substance. CP 43. On Nov. 9, 2016, Lundstrom was in-custody after being arrested for failing to appear at a prior court hearing on Oct. 16, 2016. RP 31. The State asked for bail after addressing conditions of release. RP 31. The trial court then inquired whether counsel had a response to the State's request

for bail. RP 31. Counsel for Lundstrom simply stated as follows:

> Yeah, I don't have much of one. But I do take exception to the gentleman being -- *looks like* five-point shackles without an independent fiduciary (sic) determination of the appropriateness of that. It looks like Mr. Oakley is his current assigned counsel, so Mr. Oakley will be getting this new case as well.

RP 32 (emphasis added).

That same day, defense counsel filed a written motion objecting to the use of the restraints but did not note the motion up for a hearing or pursue the matter further and the court did not address the issue. CP 37, RP 30–33. The defense did not note the issue up to be heard before the court. *State v. Lundstrom*, 429 P.3d 1116, 1120 (Wn. App., 2018).

On December 6, 2016, Lundstrom entered a plea of guilty and the court accepted the sentencing recommendation agreed by the parties and sentenced Lundstrom accordingly. RP 64, CP 32.

Lundstrom appealed and asserted that his due process rights were violated because he was brought before the court on a first appearance in restraints although the court did not hold a hearing and make an individualized determination as to whether restraints would be warranted.

The Court of Appeals, Div. 2, citing to cases where defendants were brought to trial or sentencing in restraints, held that "the trial court abused its discretion and committed constitutional error by failing to make an individualized inquiry into the necessity for pretrial restraints when

Lundstrom took exception to the use of pretrial restraints. Therefore, we hold that Lundstrom's due process rights were violated by his pretrial restraint."

State v. Lundstrom, 429 P.3d 1116, 1121 (Wn. App., 2018).

V. ARGUMENT

A. THIS COURT SHOULD ACCEPT REVIEW OF THE COURT OF APPEALS DECISION BECAUSE ALL OF THE CRITERIA UNDER RAP 13.4(b) HAVE BEEN ESTABLISHED.

RAP 13.4(b) sets forth the considerations governing this Court's acceptance of review:

> A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision by the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a decision of another division of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

1. The decision of the Court of Appeals conflicts with the holdings in *State v. Damon*, *State v. Hartzog*, *State v. Finch*, and *State v. Turner* because it applies the underlying constitutional principles in those cases beyond their traditional limits to all courtroom proceedings where the risks of danger of prejudice to the defendant's right to a fair trial and right to counsel do not outweigh the court's discretion to implement measures to promote courtroom safety.

"'It is well settled that a defendant in a criminal case is entitled to appear at trial free from all bonds or shackles except in extraordinary

circumstances.'" *State v. Turner*, 143 Wash.2d 715, 725, 23 P.3d 499 (2001) (quoting *State v. Finch*, 137 Wn.2d 792, 842, 975 P.2d 967 (1999)). "'Restraints are viewed with disfavor because they may abridge important constitutional rights, including the presumption of innocence, privilege of testifying in one's own behalf, and right to consult with counsel during trial.'" *Id.* (quoting *State v. Hartzog*, 96 Wn.2d 383, 398, 635 P.2d 694 (1981)).

On the other hand, "'[i]t is fundamental that a trial court is vested with the discretion to provide for courtroom security, in order to ensure the safety of court officers, parties, and the public.'" *Turner*, 143 Wn.2d 715, 725, 23 P.3d 499 (2001) (quoting *Hartzog*, 96 Wn.2d at 396).

Thus there is a tension between the defendant's right to counsel and right to a fair trial without the prejudice of being seen in restraints before a jury, and the interests of a court in ensuring public safety in its courtrooms. The court's interests must be given greater weight where the defendant's interests are not implicated.

Although a court must be persuaded by compelling circumstances and must pursue lesser restrictive alternatives before requiring a defendant to appear before *a jury* in shackles, this rule historically does not apply to *non-jury* and *non-guilt* phase proceedings and American Courts have adhered closely to this doctrine. *See Deck v. Missouri*, 544 U.S. 622, 626–

27 , 125 S.Ct. 2007, 2010–11 (2005) *abrogated on other grounds by Fry v. Pliler*, 551 U.S. 112, 127 S.Ct. 2321, 168 L.Ed.2d 16 (2007) ("In discussing the "deep roots" of this rule, however, the Court noted that 'the rule did not apply at 'the time of arraignment,' or like proceedings before the judge.'").

The cases that address shackling of defendants in the courtroom "turn in large part on fear that the jury will be prejudiced by seeing the defendant in shackles." *See Deck*, 544 U.S. at 630, 125 S.Ct. 2007; *Duckett v. Godinez*, 67 F.3d 734, 748 (9th Cir. 1995); *see also Illinois v. Allen*, 397 U.S. 337, 344, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970)). "[A] judge in a pretrial hearing presumably will not be prejudiced by seeing defendants in shackles." *Id.* at 1012 (citing *United States v. Zuber*, 118 F.3d 101, 104 (2d Cir. 1997) ("We traditionally assume that judges, unlike juries, are not prejudiced by impermissible factors.")).

Here, the Court of Appeals applied the principle requiring an individualized showing of a compelling need for restraints during trials and sentencing proceedings to all other hearings before a court if a defendant objects. Thus, the holding in *Lundstrom* disregards the trial courts interests in public safety and orderly conduct in the courtroom in situations where there is no risk of prejudice to a defendant's right to a fair trial and right to counsel.

Lundstrom especially interferes with the court's interest in maintaining safety in the courtroom during first appearances after an arrest where it is unknown how a defendant will act without restraints. Defendants are often arrested when still under the stress of a traumatizing event such as domestic violence, or when still under the influence of controlled substances or alcohol, or during manic mental health episodes. Requiring a hearing with the defendant unrestrained in these initial appearances to determine the need for such restraints undercuts the court's discretion to maintain safety and efficiency.

The holding of *Lundstrom* conflicts with well-established law by extending the right to be free from restraint in jury trials beyond its traditionally recognized limits and unnecessarily interferes with a court's discretion to take safety measures in the courtroom. Therefore, the State requests the Court to accept review.

2. **The Court of Appeals, Division II, decision conflicts with the decision of the Court of Appeals, Division I, in *State v. Walker*, by expanding the *Walker* Court's holding by requiring a hearing and record justifying the use of restraints in non-jury and non-sentencing hearings.**

The *Walker* Court was invited to extend the right to be free from restraint during trial and sentencing, subject to an individualized and compelling showing of need, to all hearings regardless of their nature. *State v. Walker*, 185 Wn. App. 790, 795, 344 P.3d 227 (2015) ("Walker

asks us to expressly extend the right to include appearances at all court proceedings, regardless of whether a jury is present.").

The *Walker* Court did not do so. Rather, the *Walker* Court, taking a far narrower approach, held that "regardless of the nature of the court proceeding or whether a jury is present, it is particularly within the province of the trial court to determine whether and in what manner, shackles or other restraints should be used." *Walker*, 185 Wn. App. at 797.

Thus, the *Walker* decision does not take away a court's discretion to adopt a blanket restraint policy in non-jury or non-sentencing proceedings, or for first appearances for that matter. However, the *Lundstrom* Court's cites to *Walker* to support its conclusion that the trial court abused its discretion because it did not hold a hearing to determine whether restraints would be justified in a first appearance after Lundstrom was arrested on a bench warrant for failing to appear when required. *Lundstrom*, 429 P.3d at 1120 (citing *Walker*, 185 Wn. App. at 800 ("The trial court should allow restraints only after conducting a hearing and entering findings on the record sufficient to justify their use on a particular defendant."); and *State v. Clark*, 143 Wn.2d 731, 775, 24 P.3d 1006, *cert. denied*, 534 U.S. 1000, 122 S.Ct. 475, 151 L.Ed.2d 389 (2001) ("[W]here no balancing or analysis as to the need to restrain [the defendant] was done, his shackling was constitutional error.")).

This holding has the effect of undercutting a court's discretion to adopt a blanket restraint policy in non-jury proceedings where precautions such as wrist restraints would be prudent before a hearing could take place to examine their need.

The *Lundstrom* decision also fails to consider whether the trial court had exercised its discretion by adopting a blanket restraint policy for non-jury proceedings *before* the defendant ever objected to restraints as *Lundstrom* ignores that there was no hearing and thus no record to examine. *See State v. Lundstrom*, 429 P.3d at 1120 (noting that defense failed to note its motion for a hearing).

Therefore, the decision of the Court of Appeals, Div. II in this case conflicts with the decision in *State v. Walker* by extending it well beyond its more narrow holding.

3. A significant question of law under the Constitution of the State of Washington and the United States is involved in holding in *Lundstrom*.

"It is well settled that a defendant in a criminal case is entitled to appear at trial free from all bonds or shackles except in extraordinary circumstances." *State v. Finch*, 137 Wn.2d 792, 842, 975 P.2d 967 (1999) (citations omitted).

"This is to ensure that the defendant receives a fair and impartial trial as guaranteed by the Sixth and Fourteenth Amendments of the United

States Constitution and article I, section 22 (amendment 10) of the Washington State Constitution. *State v. Finch*, 137 Wash.2d 792, 843, 975 P.2d 967 (1999) (citing *Holbrook v. Flynn*, 475 U.S. 560, 567, 106 S.Ct. 1340, 89 L.Ed.2d 525 (1986); *Estelle v. Williams*, 425 U.S. 501, 503, 96 S.Ct. 1691, 48 L.Ed.2d 126 (1976); *Hartzog*, 96 Wn.2d at 397–98).

As pointed out above, the right to be brought before a jury unfettered without a showing of compelling circumstances justifying restraints has never been held to apply to non-jury or non-sentencing proceedings where prejudice to a fair trial is not at issue. This rule historically does not apply to non-jury and non-guilt phase proceedings and American courts have adhered closely to this doctrine. *See Deck v. Missouri*, 544 U.S. 622, 626–27 , 125 S.Ct. 2007, 2010–11 (2005) *abrogated on other grounds by Fry v. Pliler*, 551 U.S. 112, 127 S.Ct. 2321, 168 L.Ed.2d 16 (2007) ("In discussing the "deep roots" of this rule, however, the Court noted that 'the rule did not apply at 'the time of arraignment,' or like proceedings before the judge.'").

The *Lundstrom* decision extended the constitutional rights stated above to a proceeding in which the risk of prejudice to the defendant's right to a fair trial and right to counsel did not exist.

Therefore, the holding in Lundstrom involves a significant question of constitutional law.

4. The petition involves an issue of substantial public interest that should be determined by the Supreme Court.

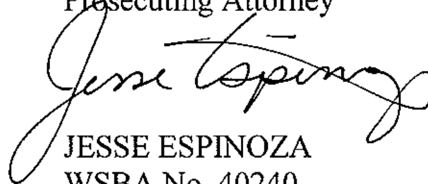
The holding in *Lundstrom* affects courtroom practices across the state which, in unison with the policies and practices of jail facilities, were designed to promote safety and efficiency in accordance with constitutional norms.

VI. CONCLUSION

For the foregoing reasons, the State respectfully requests that the Court grant review of the decision of the Court of Appeals.

DATED December 17, 2018.

Respectfully submitted,
MARK B. NICHOLS
Prosecuting Attorney



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Washington State
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. WILLIAM EDWARD LUNDSTROM, Appellant.	No. 49709-3-II PUBLISHED OPINION

LEE, A.C.J. — William E. Lundstrom appeals his sentence for two counts of unlawful possession of a controlled substance and the legal financial obligations (LFOs) imposed against him. Lundstrom argues that his pretrial appearance in restraints violated his due process rights, but he does not seek any relief due to any alleged violation of his due process rights. Rather, Lundstrom argues only that we address his claim as a matter of continuing and substantial public interest. Lundstrom also argues that the trial court abused its discretion in imposing LFOs against him.

Because pretrial restraint is an issue of continuing and substantial interest, we address whether Lundstrom's pretrial restraint violated his due process rights despite the fact that Lundstrom does not seek any relief. And we hold that Lundstrom's pretrial restraint violated due process. As to the LFO challenge, we remand to the trial court for application of recent legislative

amendments to the LFO statutes, consistent with *State v. Ramirez*, 191 Wn.2d 732, 426 P.3d 714 (2018).

FACTS

The State charged Lundstrom with two counts of unlawful possession of a controlled substance. At a preliminary appearance, Lundstrom appeared in restraints. Before the proceeding ended, defense counsel stated, "I do take exception to the gentleman being—looks like five-point shackles without an independent fiduciary [sic] determination of the appropriateness of that." Verbatim Report of Proceedings (VRP) (Nov. 9, 2016) at 32. The trial court did not respond to defense counsel's statement.

Lundstrom subsequently filed a motion objecting to the restraints and requesting removal of the shackles. The motion included a certified statement from defense counsel, which stated that he had made a public disclosure request with the Clallam County Sheriff's Office (CCSO) for their policies and discovered that CCSO policy 15.106.1 required all inmates to be brought to court in full restraints (waist chain, cuffs, and leg irons) for their first appearance. There is no record showing whether Lundstrom noted the motion for hearing before the trial court, whether the trial court held a hearing on the motion, or whether the trial court ruled on the motion.

Lundstrom pleaded guilty to two counts of unlawful possession of a controlled substance. At sentencing, Lundstrom objected to the imposition of any LFOs, including any community custody fees. Lundstrom's only source of income was his social security disability benefits. The trial court imposed a $500 crime victim assessment, a $200 criminal filing fee, and a $100 DNA collection fee. The trial court also ordered Lundstrom to "pay supervision fees as determined by

[the Department of Corrections]" based on the trial court's belief that the supervision fees were mandatory. Clerk's Papers (CP) at 20.Lundstrom appeals his sentence.

ANALYSIS

A. PRETRIAL RESTRAINT

Lundstrom argues that his pretrial restraint violated his due process rights because the trial court failed to make an individualized determination on the necessity of restraints.[1] We agree.

1. Continuing and Substantial Public Interest

Lundstrom does not seek any relief due to any alleged violation of his due process rights and argues only that we should address his claim as a matter of continuing and substantial public interest. Generally, we do not consider claims that are moot or present only abstract questions. *State v. Beaver*, 184 Wn.2d 321, 330, 358 P.3d 385 (2015). However, we have the discretion to decide an issue if the question is one of continuing and substantial public interest. *Id.*

Our Supreme Court held that

> To determine whether a case presents an issue of continuing and substantial public interest, we consider three factors: "[(1)] the public or private nature of the question presented, [(2)] the desirability of an authoritative determination for the future guidance of public officers, and [(3)] the likelihood of future recurrence of the question."

Id. (alteration in original) (internal quotation marks omitted) (quoting *State v. Hunley*, 175 Wn.2d 901, 907, 287 P.3d 584 (2012)). "The continuing and substantial public interest exception has been used in cases dealing with constitutional interpretation, the validity of statutes or regulations,

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[1] The State argues that the record is insufficient for us to review the issue. We disagree. The record includes a transcript of the pretrial proceeding where defense counsel took exception to the restraints and the motion defense counsel subsequently filed objecting to the restraints. Therefore, the record is sufficient for review.

and matters that are sufficiently important to the appellate court." *Id.* at 331. The exception is not used in fact-specific cases. *Id*.

Here, all factors weigh in favor of addressing Lundstrom's claim. First, claims involving constitutional or statutory issues, such as the pretrial restraint challenge here, are public in nature. *See Id.*. Second, a determination of the pretrial restraint issue is desirable to provide guidance to public officers on the use of pretrial restraints in the future. Third, the issue is likely to recur as the pretrial restraint policies of the CCSO will continue to affect future defendants brought before the Clallam County Superior Court for pretrial hearings. Therefore, we address whether Lundstrom's pretrial restraint violated due process.

2. Due Process

We review constitutional claims de novo. *State v. Gresham*, 173 Wn.2d 405, 419, 269 P.3d 207 (2012). Our state constitution provides that "[i]n criminal prosecutions the accused shall have the right to appear and defend in person." WASH. CONST. art. I, § 22. The right to appear and defend in person includes "the use of not only his mental but his physical faculties unfettered, and unless some impelling necessity demands the restraint of a prisoner to secure the safety of others and his own custody, the binding of the prisoner in irons is a plain violation of the constitutional guaranty." *State v. Williams*, 18 Wash. 47, 51, 50 P. 580 (1897).

Our Supreme Court has "long recognized that a prisoner is entitled to be brought into the presence of the court free from restraints." *State v. Damon*, 144 Wn.2d 686, 690, 25 P.3d 418 (citing *Williams*, 18 Wash. at 50), *as modified*, 33 P.3d 735 (2001). "[R]egardless of the nature of the court proceeding or whether a jury is present, it is particularly within the province of the trial court to determine whether and in what manner shackles or other restraints should be used." *State*

v. Walker, 185 Wn. App. 790, 797, 344 P.3d 227 (addressing the defendant's right to be free from restraints at sentencing), *review denied*, 183 Wn.2d 1025 (2015). Restraints are disfavored because they may interfere with important constitutional rights, "including the presumption of innocence, privilege of testifying in [sic] one's own behalf, and right to consult with counsel during trial." *State v. Hartzog*, 96 Wn.2d 383, 398, 635 P.2d 694 (1981).

But a defendant's right to be in court free from restraints is not limitless. *Walker*, 185 Wn. App. at 800. The right may yield to courtroom safety, security, and decorum. *Id.* A defendant may be restrained if necessary to prevent injury, disorderly conduct, or escape. *Id.*

The trial court is vested with the discretion to provide for courtroom security in order to ensure the safety of court officers, parties, and the public. *State v. Turner*, 143 Wn.2d 715, 725, 23 P.3d 499 (2001). The trial court must exercise discretion in determining the extent to which courtroom security measures are necessary and its decision must be founded upon a factual basis set forth in the record. *State v. Finch*, 137 Wn.2d 792, 846, 975 P.2d 967, *cert. denied*, 528 U.S. 922 (1999). The trial court should allow restraints only after conducting a hearing and entering findings on the record sufficient to justify their use on a particular defendant. *Walker*, 185 Wn. App. at 800. Failing to exercise its discretion constitutes constitutional error. *See State v. Clark*, 143 Wn.2d 731, 775, 24 P.3d 1006, *cert. denied*, 534 U.S. 1000, (2001) ("[W]here no balancing or analysis as to the need to restrain [the defendant] was done, his shackling was constitutional error.").

Here, the trial court abused its discretion and committed constitutional error when it failed to address the issue of Lundstrom's pretrial restraint. Although Lundstrom may have failed to note his motion for hearing, defense counsel nonetheless raised the issue when he took exception to the

use of pretrial restraints. The trial court failed to respond or otherwise address the particular use of restraints on Lundstrom or the CCSO policy on restraints. By failing to do so and allowing Lundstrom to be restrained, the trial court failed to exercise its discretion and effectively deferred the decision to the CCSO policy. *See Hartzog*, 96 Wn.2d at 400 ("A broad general policy of imposing physical restraints upon prison inmates charged with new offenses because they may be 'potentially dangerous' is a failure to exercise discretion.") (quoting *People v. Duran*, 16 Cal. 3d 282, 545 P.2d 1322, 127 Cal. Rptr. 618, 90 A.L.R.3d 1 (1976)); *see also State v. Jaquez*, 105 Wn. App. 699, 709, 20 P.3d 1035 (2001) ("[T]he sole reason for the trial court's allowing the use of restraints was because it was general jail policy. . . . [A] court's decision to defer to the security policy of correctional officers is unjustifiable."). As a result, the trial court abused its discretion and committed constitutional error by failing to make an individualized inquiry into the necessity for pretrial restraints when Lundstrom took exception to the use of pretrial restraints. Therefore, we hold that Lundstrom's due process rights were violated by his pretrial restraint.[2]

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[2] Because Lundstrom does not request relief resulting from any violation of his due process rights, our inquiry ends with a determination that his due process rights were violated by his pretrial restraints.

Generally, an error that violates a defendant's constitutional right is presumed to be prejudicial. *Finch*, 137 Wn.2d at 859. But the State can overcome the presumption by showing the error was harmless beyond a reasonable doubt. *Finch*, 137 Wn.2d at 859. "A claim of unconstitutional shackling is subject to harmless error analysis." *State v. Hutchinson*, 135 Wn.2d 863, 888, 959 P.2d 1061 (1998), *cert. denied*, 525 U.S. 1157 (1999). The likelihood of prejudice is significantly reduced in a proceeding without a jury. *State v. E.J.Y.*, 113 Wn. App. 940, 952, 55 P.3d 673 (2002). There is a presumption that the trial court properly discharged its official duties without bias or prejudice. *In re Pers. Restraint of Davis*, 152 Wn.2d 647, 692, 101 P.3d 1 (2004).

Here, even though the trial court erred, the error was harmless beyond a reasonable doubt. Lundstrom pleaded guilty and waived his rights to a public trial by an impartial jury and to the presumption of innocence. Thus, those rights could not have been violated. In pleading guilty,

B. LEGAL FINANCIAL OBLIGATIONS

Lundstrom argues that the trial court abused its discretion when it imposed LFOs and LFO payment terms. In light of recent statutory amendments, we remand the LFO issue to the trial court.

The legislature recently amended former RCW 36.18.020(2)(h), and as of June 7, 2018, trial courts are prohibited from imposing the $200 criminal filing fee on defendants who are indigent at the time of sentencing. Laws of 2018, ch. 269, §17; *Ramirez*, 191 Wn.2d 732. Our Supreme Court has held that the amendment applies prospectively and is applicable to cases pending on direct review and not final when the amendment was enacted. *Id.* at 747. The legislature also recently amended former RCW 43.43.7541, and as of June 7, 2018, states, in part:

> Every sentence imposed for a crime specified in RCW 43.43.754 must include a fee of one hundred dollars unless the state has previously collected the offender's DNA as a result of a prior conviction.

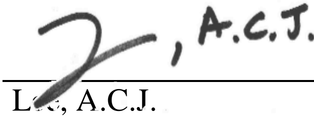
In light of the recent statutory amendments and the court's holding in *Ramirez*, we reverse the imposition of LFOs and remand to the trial court to impose LFOs consistent with the recent legislative amendments.[3]

Lundstrom also agreed to the recommendations of the State, including the imposition of an exceptional sentence. Thus, there was no prejudice in regards to sentencing because the trial court followed the sentencing recommendation Lundstrom agreed to in his plea agreement. Furthermore, Lundstrom was restrained pretrial, outside the presence of a jury. The likelihood of prejudice is substantially reduced when a jury is not present and the trial court is presumed to discharge its duties without prejudice. *E.J.Y.*, 113 Wn. App. at 952; *Davis*, 152 Wn.2d at 692. Therefore, the error regarding Lundstrom's pretrial restraint was harmless.

[3] We also note that, although the trial court intended to impose only mandatory LFOs, it imposed costs of community custody, which are discretionary LFOs. RCW 9.94A.703(2)(d) ("*Unless waived by the court* . . . the court shall order an offender to . . . [p]ay supervision fees as determined by the department.") (emphasis added).

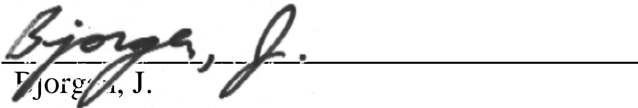
CONCLUSION

We hold that Lundstrom's pretrial restraint violated his due process rights. We reverse imposition of LFOs and remand for the trial court to impose LFOs consistent with the recent legislative amendments to the LFO statutes.

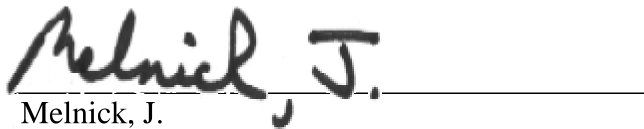


Lee, A.C.J.

We concur:



Bjorgen, J.



Melnick, J.

CLALLAM COUNTY DEPUTY PROSECUTING ATTORN

December 17, 2018 - 2:27 PM

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