

No. 49847-2-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

SCOTT ANDREW MENDEZ,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR THURSTON COUNTY

APPELLANT'S OPENING BRIEF

MAUREEN M. CYR
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

TABLE OF CONTENTS

A. SUMMARY OF APPEAL..... 1

B. ASSIGNMENTS OF ERROR..... 1

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR 2

D. STATEMENT OF THE CASE..... 3

E. ARGUMENT..... 9

1. Multiple continuances granted without adequate justification violated Mendez’s right to a speedy trial..... 9

a. An accused held in jail must be brought to trial within 60 days unless the court properly grants a continuance with sufficient justification 10

b. The trial court abused its discretion in granting a continuance for the purpose of accommodating the prosecutor’s vacation 12

c. The trial court abused its discretion in granting a continuance for the purpose of accommodating Officer Watkins’ vacation 15

d. The trial court abused its discretion in granting a continuance on the basis of courtroom and judicial unavailability..... 16

e. The charge must be dismissed with prejudice 18

2. Allowing Mendez to be tried while shackled, without any finding that shackling was necessary, violated his constitutional rights to a fair and impartial trial and to appear and defend in person..... 19

- a. *An accused has an absolute constitutional right to appear free from shackles during a criminal trial, unless shackling is necessary to prevent the defendant from injuring someone, from being disorderly, or from escaping* 19
- b. *The conviction must be reversed because the record does not show, and the trial court did not find, that Mendez was at risk of injuring anyone in the courtroom, of being disorderly, or of escaping* 23

F. CONCLUSION 25

TABLE OF AUTHORITIES

Constitutional Provisions

Const. art. I, § 22 20, 21

U.S. Const. amend. VI 20

U.S. Const. amend. XIV 20

Washington Cases

State v. E.J.Y., 113 Wn. App. 940, 55 P.3d 673 (2002) 22

State v. Finch, 137 Wn.2d 792, 975 P.2d 967
(1999) 19, 20, 21, 22, 24, 25

State v. Flinn, 154 Wn.2d 193, 110 P.3d 748 (2005) 12, 17

State v. Hartzog, 96 Wn.2d 383, 635 P.2d 694 (1981) 20, 21

State v. Heredia-Juarez, 119 Wn. App. 150, 17 P.3d 648 (2001) .. 12, 15

State v. Jaquez, 105 Wn. App. 699, 20 P.3d 1035
(2001) 21, 22, 23, 24, 25

State v. Kenyon, 167 Wn.2d 130, 16 P.3d 1024 (2009) 10, 11, 17, 18

State v. Kokot, 42 Wn. App. 733, 713 P.2d 1121 (1986) 10, 17

State v. Nguyen, 68 Wn. App. 906, 847 P.2d 936 (1993) 15, 16

State v. Saunders, 153 Wn. App. 209, 220 P.3d 1238 (2009) 12

United States Supreme Court Cases

Deck v. Missouri, 544 U.S. 622, 125 S. Ct. 2007, 161 L. Ed. 2d 953
(2005) 19, 20, 21

<u>Estelle v. Williams</u> , 425 U.S. 501, 96 S. Ct. 1691, 48 L. Ed. 2d 126 (1976).....	20
--	----

Other Jurisdictions

<u>In re Staley</u> , 67 Ill.2d 33, 364 N.E.2d 72 (1977)	22
<u>People v. Best</u> , 19 N.Y.3d 739, 955 N.Y.S 2d 860, 979 N.Ed.2d 1187 (2012).....	22

Court Rules

CrR 3.3(a)(1).....	11
CrR 3.3(b)(1)(i).....	10
CrR 3.3(b)(5)	11
CrR 3.3(c)(1).....	10
CrR 3.3(e)	8, 11
CrR 3.3(f)(2)	8, 11
CrR 3.3(h)	18
RAP 2.5(a)	23

A. SUMMARY OF APPEAL

The trial court granted numerous continuances over Scott Mendez's consistent objections. He spent 172 days in jail before he was finally brought to trial. The court did not have adequate justification to continue the trial date in order to accommodate the vacation schedule of the deputy prosecutor, to accommodate the vacation schedule of a State witness, or because of courtroom and judicial unavailability. These continuances violated the speedy trial rule and the charge must be dismissed with prejudice.

When he was finally brought to trial, Mendez was shackled and wore jail garb throughout the trial. The court made no finding, and the evidence does not show, that shackling was necessary for any purpose. Mendez's constitutional rights to a fair and impartial trial, and to appear and defend in person, were therefore violated.

B. ASSIGNMENTS OF ERROR

1. Mendez's right to a speedy trial was violated.
2. The trial court erred in allowing Mendez to be tried while shackled, in violation of his constitutional rights to a fair and impartial trial and to appear and defend in person.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. A trial court may not continue the trial date beyond the speedy trial period for the purpose of accommodating the prosecutor's vacation unless the State makes a good faith effort to assign the case to the next available prosecutor. Did the court err in continuing the trial date beyond the speedy trial period for this purpose, where the prosecutor's vacation conflicted with the original trial date, the prosecutor waited until five days before trial to notify the court of the conflict, and no other factors suggest the case could not reasonably be reassigned to another prosecutor?

2. The court may not grant a continuance due to the unavailability of a State witness unless there is a valid reason for the unavailability and the witness will become available within a reasonable time. Did the court err in continuing the trial date for more than one month to accommodate the vacation of a State witness, where the record suggests the witness was not unavailable during that entire time period?

3. Courtroom or judicial unavailability is not a valid reason to grant a continuance beyond the speedy trial period. Did the court err in granting a continuance due to courtroom and judicial unavailability?

4. A defendant may not stand trial in shackles unless the court finds, and the record shows, that shackling is necessary to prevent the defendant from injuring someone, disrupting the proceedings, or escaping. Did the court err in permitting Mendez to stand trial in shackles and jail garb where the court made no finding, and the record contains no evidence, that shackling was necessary for any purpose?

D. STATEMENT OF THE CASE

Scott Mendez and Whitney Morrell are engaged to be married. RP 43. They live together in an apartment in Olympia. 9/26/16RP 51.

On the morning of April 7, 2016, Mendez and Morrell had an argument. 9/26/16RP 48. Mendez left the apartment and walked down the road toward the Concordia West Apartments. 9/26/16RP 45.

After the argument, Morrell was angry at Mendez and wanted to get him in trouble. 9/26/16RP 44. She called 911 and said that Mendez was going to see his ex-girlfriend, Andrea Dominguez. 9/26/16RP 46. Morrell knew there was a no-contact order in effect prohibiting Mendez from contacting Dominguez. 9/26/16RP 47. Morrell had heard that Dominguez lived at the Concordia West Apartments. 9/26/16RP 47. But Mendez did not tell Morrell that was

where he was going. 9/26/16RP 50. She did not know why he was walking in that direction. 9/26/16RP 45.

Morrell called 911 in retaliation, not because she needed any assistance. Mendez had not assaulted her. 9/26/16RP 48.

Olympia Police Officer Jason Watkins responded to the Concordia West Apartments. 9/26/16RP 20. When he arrived, he saw Mendez standing about five to ten feet from Dominguez's door. 9/26/16RP 23. Mendez said he was not there to see Dominguez. 9/26/16RP 25-26. Another officer talked to Dominguez, who confirmed she had no contact with Mendez that day. 9/26/16RP 27. Nonetheless, Officer Watkins arrested Mendez. 9/26/16RP 28, 30.

Mendez was charged in Thurston County Superior Court with one count of violation of a no-contact order. The charge was a felony based on the allegation he had two prior convictions for violating a no-contact order. CP 5.

Mendez remained in custody throughout the proceedings.

Mendez was arraigned on April 26, 2016. Trial was set for June 20. Sub #14.

On June 15, the deputy prosecutor moved for a continuance. He said he was going to be out of the state and unavailable the following

week. Mendez objected. The court noted the objection but found good cause for the continuance and found it would not prejudice the defense. Defense counsel said the next date he was available was July 11. The court set July 11 as the new trial date. 6/15/16RP 4-5; CP 11.

On July 6, defense counsel moved for a continuance. He was in a trial in Pierce County which was scheduled to last for the rest of the month. He was also scheduled to be out of town from July 28 to August 1. Counsel requested a new trial date of August 8. Mendez again objected to the continuance. The court noted Mendez was “anxious to get this matter to trial,” but granted the continuance, finding good cause for it. The court reset the trial date for August 8. 7/06/16RP 3-5; CP 12.

On August 3, the prosecutor requested another continuance. Defense counsel was not present at the hearing but another attorney stood in for him. The prosecutor explained that Officer Watkins, a material witness, was out of the state until September 10. The prosecutor requested a new trial date of September 12, the first date Officer Watkins would be back from vacation. 8/03/16RP 3-4. The court said that September 12 “is a nonjury trial week.” 8/03/16RP 5. The prosecutor then requested a new trial date of September 19. The

attorney standing in for defense counsel objected. He could not say whether the continuance would prejudice the defense but noted that “September 19th is quite a long way off and Mr. Mendez is in custody status.” 8/03/16RP 5. The court noted the objection but granted the continuance, finding it was necessary for the administration of justice. The court set a new trial date of September 19. 8/03/16RP 6; CP 14.

On August 4, Mendez filed a *pro se* motion to dismiss the charge and wrote a letter to the chief judge, arguing his right to a fair and speedy trial were violated. He emphasized he had been in custody for 120 days and never waived his right to a fair and speedy trial. He was ready for trial. He argued his case should be dismissed due to the delay in bringing him to trial and the potential prejudice to his defense. CP 15-19.

The parties appeared for a status hearing on September 14. Mendez waived his right to a jury trial and requested a bench trial. 9/14/16RP 4; CP 22-24.

Defense counsel requested that the trial be set for the following Tuesday or Wednesday. He would be finishing up a trial in Pierce County on Monday. 9/14/16RP 7. The court asked, “will you be confirming even if the court sets it on Monday?” 9/14/16RP 8.

Counsel said, "Sure." 9/14/16RP 8. The court said, "I can't control what other trial schedules are so it may very well be confirmed for trial on Monday." 9/14/16RP 8.

Sure enough, the trial was set for Monday, September 19. CP 22. On September 16, defense counsel filed a declaration requesting that the trial date be reset for September 21. CP 23. He could not be in court on Monday because he was still in trial in Pierce County. CP 23.

On Monday, September 19, the prosecutor and Mendez appeared but defense counsel was not present. 9/19/16RP 3. The prosecutor requested a continuance until Wednesday due to the unavailability of defense counsel. 9/19/16RP 5. The court declined to set the trial for Wednesday, stating

The Court cannot begin this trial on Wednesday. So that is not an option for the Court. In addition to no judge being available for those two days of trial, Wednesday and Thursday, which precludes the Court from granting that request, that's also contrary to the way this Court generally sets trials. We set them a certain way and then other trials other hearing [sic] and other matters are scheduled around that. So the Court simply cannot accommodate that request. Frankly, if I could, I would have originally set it for Tuesday or later, but in scheduling the trials in other matters scheduled for this week, that was simply not possible, which is why it was scheduled to begin today.

9/19/16RP 5-6.

Citing CrR 3.3(e)(8), the court found unavoidable or unforeseen circumstances affecting the time for trial beyond the control of the court or the parties. Citing CrR 3.3(f)(2), the court also found a continuance was required in the administration of justice and Mendez would not be prejudiced in the presentation of his defense. The court set a new status hearing for Wednesday, September 21, at which time a new trial date could be set. 9/19/16RP 7-8.

Once again, Mendez objected. He had been in jail for 165 days and still his trial had not begun. 9/19/16RP 9-10.

The bench trial finally began on September 26.

Although the record contains no evidence or suggestion that Mendez posed any sort of security risk, he appeared in court in jail clothing and shackles. His wrists were shackled and attached to a chain around his waist. His ankles were shackled and connected by a chain approximately 18 inches long. 9/26/16RP 8-9.

Defense counsel asked that Mendez's two hands be unshackled. In the alternative, counsel requested that at least his writing hand be unshackled so that he could take notes and assist counsel. 9/26/16RP 9-10. The prosecutor did not object "to him having a hand free." The prosecutor said "I don't believe there is any prejudice to the defendant

nor any safety risk of him having his hand free so he can take notes or ask his attorney questions.” 9/26/16RP 10.

The court granted the request to have one hand free but made no finding that the other restraints were necessary. The court explained,

I do note for the record that this is a bench trial and that in proceedings before this Court in which folks who are in custody appear before this Court, they typically appear in the way that Mr. Mendez is currently in this courtroom.

However, it seems to be a very reasonable request by Mr. Quillian to allow Mr. Mendez to have his right hand, the hand that he writes with, free during the trial so that he may write notes during the trial and provide notes to Mr. Quillian.

9/26/16RP 10.

The court found Mendez guilty as charged. CP 30-31.

E. ARGUMENT

1. Multiple continuances granted without adequate justification violated Mendez’s right to a speedy trial.

The court granted multiple continuances without adequate justification. The multiple continuances extended the time for trial well beyond the 60-day speedy trial period. Mendez was arrested on April 7, 2016, but was not brought to trial until September 26. He spent 172 days in jail before his trial finally began. He consistently objected to every continuance.

Because the court's reasons for granting the continuances were not sufficient to satisfy the strict requirements of the speedy trial rule, Mendez's right to a speedy trial was violated. The charge must be dismissed with prejudice.

a. An accused held in jail must be brought to trial within 60 days unless the court properly grants a continuance with sufficient justification.

The speedy trial rule requires that an accused who is detained in jail must be brought to trial within 60 days of arraignment. CrR 3.3(b)(1)(i); CrR 3.3(c)(1).

The purpose of the speedy trial rule is to protect the accused's constitutional right to a speedy trial and to prevent undue and oppressive incarceration before trial. State v. Kenyon, 167 Wn.2d 130, 136, 216 P.3d 1024 (2009).

"This state has always been strict in its application of the speedy trial provisions of CrR 3.3." State v. Kokot, 42 Wn. App. 733, 737, 713 P.2d 1121 (1986). Although the constitutional right to a speedy trial does not mandate a trial within 60 days, "[p]ast experience has shown that unless a strict rule is applied, the right to a speedy trial as well as the integrity of the judicial process, cannot be effectively

preserved.” Kenyon, 167 Wn.2d at 136 (internal quotation marks and citation omitted).

It is ultimately the responsibility of the court to ensure a trial in accordance with the speedy trial rules. CrR 3.3(a)(1); Kenyon, 167 Wn.2d at 136.

Certain periods are excluded when computing the time for a speedy trial. Justifiable continuances granted by the court are excluded. CrR 3.3(e)(3), (f). Also, delays caused by “[u]navoidable or unforeseen circumstances affecting the time for trial beyond the control of the court or of the parties” are excluded. CrR 3.3(e)(8). If any period of time is excluded under CrR 3.3(e), the speedy trial period extends to “30 days after the end of that excluded period.” CrR 3.3(b)(5).

If the defendant objects to a continuance, the court may not continue the trial date unless it “is required in the administration of justice and the defendant will not be prejudiced in the presentation of his or her defense.” CrR 3.3(f)(2). A motion to continue must be made before the time for trial has expired. Id. “The court must state on the record or in writing the reasons for the continuance.” Id.

The court's reasons for granting a continuance must be "convincing and valid." State v. Saunders, 153 Wn. App. 209, 221, 220 P.3d 1238 (2009). The court's decision must be manifestly reasonable and exercised on tenable grounds for tenable reasons. Id.

Only in "exceptional circumstances" should the trial court grant a continuance that sets the case beyond the 60-day time limit of CrR 3.3. State v. Flinn, 154 Wn.2d 193, 199, 110 P.3d 748 (2005). In deciding whether to grant or deny a continuance, the trial court must consider all relevant factors. Id.

b. The trial court abused its discretion in granting a continuance for the purpose of accommodating the prosecutor's vacation.

The trial court abused its discretion in granting a continuance in order to accommodate the prosecutor's vacation. When a trial date conflicts with a prosecutor's vacation schedule and a continuance would extend the trial date beyond the speedy trial period, the State has a good faith obligation to assign the case to the next available prosecutor. State v. Heredia-Juarez, 119 Wn. App. 150, 154, 17 P.3d 648 (2001). The State did not meet its obligation under the circumstances of this case.

The State has an obligation to accommodate both responsibly scheduled vacations for its deputy prosecutors and a defendant's CrR 3.3 rights. Id. Fairness in administration and effective justice require that responsibly scheduled vacations of deputy prosecutors be honored by the State. Id. A prosecutor's responsibly scheduled vacation may be a valid basis for granting a continuance. Id.

But at the same time, the State has an obligation to manage its resources responsibly in order to safeguard a defendant's speedy trial rights. Id. A prosecutor's vacation is not a valid basis for a continuance if the State does not make a good faith effort to assign the case to the next available prosecutor. Id.

Before it may grant a continuance to accommodate a prosecutor's vacation, the trial court should consider the following factors: whether the vacation conflicts with the originally scheduled trial date; whether the prosecutor promptly notified the court of the conflict; the complexity of the case and the feasibility of reassignment; and the necessity of establishing and maintaining rapport with the victims, especially in cases of serious or violent crimes. Id. at 155-56.

Applying those factors here, it is apparent the State did not act responsibly in managing its vacation schedule or make an adequate

effort to reassign the case. First, the prosecutor's vacation conflicted with the originally scheduled trial date. The State was aware from the date of arraignment on April 26 that the trial date was set for June 20. Sub #14; CP 11; 6/15/16RP 4-5. The State could have assigned the case at that time to a prosecutor who would be available. Instead, the case was assigned to a prosecutor who apparently already had a vacation planned.

Moreover, the prosecutor did not notify the court promptly of the conflict. The prosecutor waited until June 15, five days before trial, to ask for a continuance. CP 11; 6/15/16RP 4-5. At that point, the court could not as easily require the prosecutor to reassign the case. Instead, Mendez's right to a speedy trial was sacrificed.

In addition, neither the complexity of the case nor the need to establish rapport with any victims precluded reassignment to a different prosecutor. This was a relatively simple, straightforward case. Trial lasted two days. Only three witnesses testified for the State. None of them was the alleged "victim." Dominguez, the person protected by the no-contact order, denied the crime even occurred. 9/26/16RP 27.

Under these circumstances, the State had an obligation to honor Mendez's speedy trial rights by assigning the case to a prosecutor who

would be available to try it. The court abused its discretion in continuing the trial date beyond the speedy trial deadline for the purpose of accommodating the prosecutor's vacation. Heredia-Juarez, 119 Wn. App. at 154-56.

c. The trial court abused its discretion in granting a continuance for the purpose of accommodating Officer Watkins' vacation.

The trial court abused its discretion in granting a continuance of more than one month in order to accommodate Officer Watkins' vacation. The record does not establish there was a valid reason for the officer's unavailability during that entire time period.

Although the unavailability of a material State witness may be a valid ground for continuing a criminal trial, the record must show there is a valid reason for the witness's unavailability and the witness will become available within a reasonable time. State v. Nguyen, 68 Wn. App. 906, 914, 847 P.2d 936 (1993).

Here, after the trial court granted two continuances—one for the prosecutor's vacation, the other because defense counsel was in trial—the trial date was reset for August 8. 7/06/16RP 3-5; CP 12. On August 3, the prosecutor requested another continuance, stating Officer

Watkins would be on vacation and unavailable until September 12.

8/03/16RP 3-4.

The record suggests Officer Watkins was not on vacation during that entire time period. Defense counsel requested employment records for Officer Watkins from July 20 through September 30. Counsel received records from July 20 through August 29. They show Officer Watkins worked full shifts from August 4 through August 7. He was on vacation from August 13 through August 26. CP 25-29.

These records suggest Officer Watkins may have been available to testify on August 8, when the trial was set to begin. At least, they suggest he was available sometime before September 12, contrary to the prosecutor's representations. Because the record does not show there was a valid reason for Officer Watkins' unavailability through September 12, the trial court abused its discretion in granting a continuance on that basis. Nguyen, 68 Wn. App. at 914.

d. The trial court abused its discretion in granting a continuance on the basis of courtroom and judicial unavailability.

The trial court abused its discretion in granting continuances due to judicial and courtroom unavailability. This is not a valid basis to continue a criminal trial beyond the speedy trial period.

“Even though trial preparation and scheduling conflicts may be valid reasons for continuances beyond the time for trial period, court congestion is not.” Flinn, 154 Wn.2d at 200. Such delays are contrary to the public interest in prompt resolution of cases, and excusing such delays removes the inducement for the State to remedy congestion. Id.

“Court congestion” is synonymous with courtroom and judicial unavailability. Kenyon, 167 Wn.2d at 138; Kokot, 42 Wn. App. at 736-37.

Before a court may allow a continuance due to judicial or courtroom unavailability, it must carefully make a record of the unavailability of judges and courtrooms and of the availability of judges pro tempore. Kenyon, 167 Wn.2d at 138. A court must take action to alleviate court congestion, including offering a judge pro tempore. Id.

Here, the court relied upon courtroom and judicial availability to justify continuing the case. When the prosecutor moved for a continuance to September 12 in order to accommodate Officer Watkins’ vacation, the judge denied that request, stating September 12 “is a nonjury trial week.” 8/03/16RP 5. The judge did not ascertain or

establish whether a courtroom might nonetheless be made available despite this general policy.

Also, on Monday September 19, when defense counsel moved for a two-day continuance so that he could finish his trial in another case, the judge stated trial could not begin on either Wednesday or Thursday because no judge was available. 9/19/16RP 5-6. The judge did not offer and made no attempt to obtain a judge pro tempore.

Because the judge did not make an adequate record of the unavailability of judges and courtrooms or of the availability of judges pro tempore before granting the continuances, it abused its discretion. Kenyon, 167 Wn.2d at 138.

d. The charge must be dismissed with prejudice.

When the accused is not brought to trial within the time limit provided by the speedy trial rule, the charge must be dismissed with prejudice. CrR 3.3(h). Mendez's conviction must be reversed and the charge dismissed with prejudice.

2. Allowing Mendez to be tried while shackled, without any finding that shackling was necessary, violated his constitutional rights to a fair and impartial trial and to appear and defend in person.

The trial court's decision to allow Mendez to stand trial in shackles and jail garb violated his state and federal constitutional rights to a fair and impartial trial and to appear and defend in person. There was no justification for the court's decision. The court made no finding—and the record would not support such a finding—that shackling was necessary for courtroom security or to prevent Mendez from escaping. The error is inherently prejudicial and the State cannot prove beyond a reasonable doubt it did not contribute to the verdict.

a. An accused has an absolute constitutional right to appear free from shackles during a criminal trial, unless shackling is necessary to prevent the defendant from injuring someone, from being disorderly, or from escaping.

It is a long-standing and well-established rule that an accused is entitled to appear during the guilt phase of a criminal trial free from all bonds or shackles except in extraordinary circumstances. State v. Finch, 137 Wn.2d 792, 842-43, 975 P.2d 967 (1999) (and cases cited); Deck v. Missouri, 544 U.S. 622, 626, 125 S. Ct. 2007, 161 L. Ed. 2d 953 (2005). The right to appear in court unfettered, unless some

compelling necessity demands otherwise, is an “ancient right” that is “preserved in all its original vigor in this state.” State v. Hartzog, 96 Wn.2d 383, 398, 635 P.2d 694 (1981).

Both the federal and the state constitutions guarantee a criminal defendant the right to a fair and impartial trial. See Estelle v. Williams, 425 U.S. 501, 503, 96 S. Ct. 1691, 48 L. Ed. 2d 126 (1976); Finch, 137 Wn.2d at 843; U.S. Const. amends. VI, XIV; Const. art. I, § 22. Three constituent elements of this guarantee are directly implicated by the shackling of a defendant during trial. Deck, 544 U.S. at 630.

First, “the criminal process presumes that the defendant is innocent until proven guilty.” Id. This bedrock presumption entitles the accused to “the physical indicia of innocence which includes the right of the defendant to be brought before the court with the appearance, dignity, and self-respect of a free and innocent man.” Finch, 137 Wn.2d at 844. A defendant who is visibly shackled does not have the benefit of the presumption of innocence and thus his right to a fair trial is fundamentally compromised. Deck, 544 U.S. at 630.

Second, the use of shackles may impede a defendant’s ability to communicate effectively with his attorney, thereby undermining the

constitutional right to the effective assistance of counsel. Deck, 544 U.S. at 630.

Third, the use of shackles compromises “[t]he courtroom’s formal dignity, which includes the respectful treatment of defendants, reflects the importance of the matter at issue, guilt or innocence, and the gravity with which Americans consider any deprivation of an individual’s liberty through criminal punishment.” Id.

In addition, our state constitution guarantees an accused “the right to appear and defend in person.” Const. art. I, § 22. A component of this guarantee is the right of the accused to appear at trial “with the use of not only his mental but his physical faculties unfettered.” Hartzog, 96 Wn.2d at 398.

Shackling and jail garb are inherently prejudicial. Finch, 137 Wn.2d at 845-46. Restraints are an extreme measure that may be used only when “needed to maintain security in the courtroom.” Id. at 850; Hartzog, 96 Wn.2d at 398.

The trial court must establish for the record a factual basis justifying restraints specific to the defendant. State v. Jaquez, 105 Wn. App. 699, 710, 20 P.3d 1035 (2001). The court must find, and the evidence must show, “that the defendant poses an imminent risk of

escape, that the defendant intends to injure someone in the courtroom, or that the defendant cannot behave in an orderly manner while in the courtroom.” Finch, 137 Wn.2d at 850, 852-53. To do otherwise is an abuse of the trial court’s discretion. Id.

The trial court may not defer to the judgment of correctional officers. Finch, 137 Wn.2d at 853. A court’s decision to shackle “based solely on jail policy” is clearly erroneous. Jaquez, 105 Wn. App. at 709.

The right to appear unshackled at trial applies to bench trials as well as jury trials. State v. E.J.Y., 113 Wn. App. 940, 951-52, 55 P.3d 673 (2002); In re Staley, 67 Ill.2d 33, 37, 364 N.E.2d 72 (1977) (“The reasons for forbidding shackling are not limited to trials by jury.”); People v. Best, 19 N.Y.3d 739, 742, 955 N.Y.S 2d 860, 979 N.Ed.2d 1187 (2012) (“[T]he rule governing visible restraints in jury trials applies with equal force to nonjury trials.”).

Regardless of whether the factfinder is the judge or a jury, the unjustified use of restraints seriously undermines the presumption of innocence, the defendant’s right to participate meaningfully in his defense, and the dignity of the judicial process. Best, 19 N.Y.3d at 743-44. After all, “judges are human, and the sight of a defendant in

restraints may unconsciously influence even a judicial factfinder.” Id. at 744. Moreover, courts should not ignore “the way the image of a handcuffed or shackled defendant affects the public’s perception of that person and of criminal proceedings generally.” Id.

The unjustified shackling of a defendant during trial is a manifest constitutional error that may be raised for the first time on appeal. Jaquez, 105 Wn. App. at 708 n.7; RAP 2.5(a).

b. The conviction must be reversed because the record does not show, and the trial court did not find, that Mendez was at risk of injuring anyone in the courtroom, of being disorderly, or of escaping.

The trial court abused its discretion in allowing Mendez to be tried while shackled and wearing jail garb. The court made no finding that Mendez posed any danger to anyone, that he was disorderly, or that he posed any risk of escaping. See 9/26/16RP 8-10. Indeed, the record would not have supported such a finding. There is no evidence at all that Mendez misbehaved in any manner. There is no evidence that he was anything other than an ordinary, unexceptional defendant.

It appears the court allowed Mendez to remain shackled during trial simply as a matter of general policy. The court stated, “in proceedings before this Court in which folks who are in custody appear

before this Court, they typically appear in the way that Mr. Mendez is currently in this courtroom.” 9/26/16RP 10.

This was an abuse of discretion because a court may not rely upon general policy as a justification for shackling a defendant. Finch, 137 Wn.2d at 853; Jaquez, 105 Wn. App. at 709. The court was required but failed to establish reasons specific to Mendez that justified the use of restraints. Jaquez, 105 Wn. App. at 710.

When a defendant’s constitutional right to be tried free from restraints is violated, the error is presumed prejudicial. Finch, 137 Wn.2d at 859. The State must prove beyond a reasonable doubt the error did not contribute to the verdict. Id. The State must establish the evidence is so overwhelming that no rational conclusion other than guilt can be reached. Id. at 859-62.

The State cannot meet that substantial burden in this case. Although Mendez did not dispute the existence of the no-contact order, or that he was found by Officer Watkins within 500 feet of Dominguez’s residence, he *did* dispute that he knew Dominguez lived there and that he went there to contact her. 9/26/16RP 25-26; 9/27/16RP 71-75.

The evidence presented to prove Mendez knowingly violated the no-contact order was far from overwhelming. Dominguez denied having any contact with Mendez. 9/26/16RP 27. The address listed for her on the no-contact order is different from the address where she currently lives and where Mendez was found. 9/26/16RP 29. Morrell said she saw Mendez walking down the road, in the direction of Dominguez's apartment building, but she also said she did not know where he was going or why he was walking in that direction. 9/26/16RP 45-50. There are several other apartment buildings and businesses in the area. 9/26/16RP 53. The Chehalis Trail is also nearby and within walking distance. 9/26/16RP 51. The evidence is not overwhelming that Mendez was in that location because he knew Dominguez lived there.

In light of the equivocal nature of the evidence, the error in allowing Mendez to appear at trial in shackles and jail garb is not harmless. Finch, 137 Wn.2d at 859-62; Jaquez, 105 Wn. App. at 710. The conviction must be reversed.

F. CONCLUSION

Mendez's right to a speedy trial was violated. This requires reversal of the conviction and dismissal of the charge with prejudice.

Also, Mendez's constitutional right to a fair and impartial trial was violated because he was required to stand trial in shackles and jail garb. This requires reversal of the conviction and remand for a new trial.

Respectfully submitted this 24th day of May, 2017.

/s Maureen M. Cyr

State Bar Number 28724
Washington Appellate Project – 91052
1511 Third Avenue, Suite 701
Seattle, WA 98101
Phone: (206) 587-2711
Fax: (206) 587-2710
Email: maureen@washapp.org

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 49847-2-II
v.)	
)	
SCOTT MENDEZ,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 24TH DAY OF MAY, 2017, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION TWO** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

- | | | |
|--|---|---|
| [X] CAROL LA VERNE, DPA
[Lavernc@co.thurston.wa.us]
[PAOAppeals@co.thurston.wa]
THURSTON COUNTY PROSECUTOR'S OFFICE
2000 LAKERIDGE DR SW BLDG 2
OLYMPIA WA 98502-6045 | ()
()
(X)
()
()
()
() | U.S. MAIL
HAND DELIVERY
E-SERVICE
VIA PORTAL |
| [X] SCOTT MENDEZ
394659
OLYMPIC CORRECTIONS CENTER
11235 HOH MAINLINE
FORKS, WA 98331 | (X)
()
()
() | U.S. MAIL
HAND DELIVERY
_____ |

SIGNED IN SEATTLE, WASHINGTON THIS 24TH DAY OF MAY, 2017.



X _____

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, Washington 98101
☎(206) 587-2711

WASHINGTON APPELLATE PROJECT

May 24, 2017 - 4:13 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 49847-2
Appellate Court Case Title: State of Washington, Respondent v Scott A. Mendez, Appellant
Superior Court Case Number: 16-1-00587-3

The following documents have been uploaded:

- 6-498472_Briefs_20170524161240D2412308_8499.pdf
This File Contains:
Briefs - Appellants
The Original File Name was washapp.org_20170524_160157.pdf

A copy of the uploaded files will be sent to:

- wapofficemail@washapp.org
- PAOAppeals@co.thurston.wa.us
- Lavernc@co.thurston.wa.us
- maureen@washapp.org
- greg@washapp.org

Comments:

Sender Name: MARIA RILEY - Email: maria@washapp.org

Filing on Behalf of: Maureen Marie Cyr - Email: maureen@washapp.org (Alternate Email: wapofficemail@washapp.org)

Address:
1511 3RD AVE STE 701
SEATTLE, WA, 98101
Phone: (206) 587-2711

Note: The Filing Id is 20170524161240D2412308