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No. 97681-3

THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,  
Respondent/Cross-Petitioner,

v.

JOHN JACKSON,  
Petitioner/Cross-Respondent

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**BRIEF OF AMICUS CURIAE**

**WASHINGTON ASSOCIATION OF PROSECUTING  
ATTORNEYS**

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## **I. INTEREST OF AMICUS CURIAE**

The Washington Association of Prosecuting Attorneys (“WAPA”) represents the elected prosecutors of Washington State. Those persons are responsible by law for the prosecution of all felony cases in this state and of all gross misdemeanors and misdemeanors charged under state statutes.

WAPA is interested in cases such as this, involving, among other policy considerations: (1) the safety of all parties present in the courtroom, including criminal defendants; (2) the recurring transportation of criminal defendants, often many at one time, to and from routine, non-jury trial court hearings; (3) procedures that may unduly burden already overworked detention facilities and courts; and (4) precedent that may result in a slippery slope of unintended consequences on other well-established procedural law.

## **II. ISSUES PRESENTED**

1. Are judges presumed capable of disregarding any potential subconscious effect of viewing restraints upon a defendant during pretrial hearings, and is the defendant’s presumption of innocence implicated by the use of restraints during such hearings?
2. Whether the use of restraints during pretrial proceedings improves the safety of courtrooms, enhancing the dignity of the court?
3. Could a rule based upon the presumption that a trial court cannot disregard the presence of restraints during pretrial hearings erode other well-established law and strain both financial and human resources?
4. Must an objection to the use of shackles be made in order to preserve any claim of error and are there strategic reasons a defendant may choose not to object?

### III. STATEMENT OF THE CASE

The facts of this case are discussed in detail in the briefs below and in the published decision, *State v. Jackson*, 10 Wn. App. 2d 136, 447 P.3d 633 (2019). In short, John Jackson was charged with second degree assault after he was alleged to have strangled his girlfriend. CP 76, 79.

The defendant was restrained at his first appearance. RP 6. His attorney filed a motion on his behalf objecting to the use of shackles at that hearing, as well as other non-trial hearings. CP 72-74; RP 6. The court set a bond, and scheduled an arraignment for a later date. RP 8-14. At a separate hearing approximately one month later, the court ruled: “the relevant cases [require] the court to use the least restrictive means reasonably available to maintain adequate courtroom security.” CP 65. The court granted the defendant’s motion “to the extent that the court agree[d] there are less restrictive means of furthering the compelling government interest of courtroom security in many types of proceeding.” CP 65. The less restrictive means envisioned by the court was the use of video conferencing; however, because the court estimated video conferencing implementation would take six months, the court proceeded under a policy set forth in a January 20, 2017, opinion. CP 6, 66. Under the earlier policy, all criminal defendants would be restrained during pretrial proceedings. *Jackson*, 10 Wn. App. 2d at 141.

The defendant appealed his conviction challenging both the use of pretrial restraints and the use of a hidden leg restraint during his jury trial. The Court of Appeals found the trial court erred in both regards, but found the error to be harmless beyond a reasonable doubt. *Id.* at 149-50. Specifically, as to the use of pretrial restraints, the appellate court found the trial court abused its discretion and committed constitutional error by failing to make any individualized findings regarding the need to place Jackson in restraints during pretrial hearings. *Id.* at 147-48.

#### **IV. BACKGROUND AND SUMMARY**

From Washington's earliest years of statehood, this Court has held that article I, section 22, of our Constitution, which declares, "in criminal prosecutions the accused shall have the right to appear and defend in person," protects criminal defendants from being shackled during trial without necessity. *State v. Williams*, 18 Wash. 47, 51, 50 P. 580 (1897). In *Williams*, this Court noted that:

It was the ancient rule at common law that a prisoner brought into the presence of the court for trial upon a plea of not guilty to an indictment was entitled to appear free of all manner of shackles or bonds; and, prior to [the year] 1722, when a prisoner was arraigned or appeared at the bar of the court to plead, he was presented without manacles or bonds, unless there was evident danger of his escape.

*Id.* at 49 (citing 2 Hale, P.C. 219; 4 Bl. Comm. 322; *Layer's Case*, 6 State Trials (4th Ed., by Hargrave) 230, 231, 244, 245; *Waite's Case*, 1 Leach, 36).

In 1722, however, the court made the distinction that a “prisoner might be brought ironed to the bar for arraignment, but that his shackles must be stricken off at the trial.” *See State v. Temple*, 92 S.W. 869, 872 (Mo. 1906) (citing *Case of Layer*, 16 Howell’s St. Tr. 94). In *Deck v. Missouri*, the Supreme Court of the United States recognized that historically, the right to appear unrestrained did not apply at the time of pretrial proceedings, but rather, was meant to protect a defendant’s appearance during a jury trial. 544 U.S. 622, 626, 125 S.Ct. 2007, 161 L.Ed.2d 953 (2005).

Washington State developed a general rule that a defendant is entitled to appear at trial and during the penalty phase of court proceedings free from shackles except in extraordinary circumstances. *State v. Finch*, 137 Wn.2d 792, 842, 975 P.2d 967 (1999). Several reasons have been cited in support of this rule – the sight of a shackled defendant may suggest he is a dangerous and untrustworthy person and may violate the defendant’s presumption of innocence; restraints may also restrict a defendant’s ability to assist counsel, may interfere with the right to testify in his own behalf, or may deprive him of the full use of his faculties. *State v. Damon*, 144 Wn.2d 686, 690-91, 25 P.3d 418 (2001), *as amended* (July 6, 2001), *as modified on denial of reh’g*, 33 P.3d 735 (2001). As this Court stated in *In Re Davis*:

Although physically restraining a defendant with shackles or handcuffs during trial is a potentially prejudicial practice, employing such a technique *is not of itself unconstitutional*. A

substantive claim of unconstitutional shackling in this State is subject to harmless error analysis. Under that analysis, the defendant must show that the shackling “had substantial or injurious effect or influence on the jury’s verdict.”

152 Wn.2d 647, 694, 152 P.3d 1 (2004) (emphasis added) (footnotes omitted).

In *Damon*, a case involving the use of a restraint chair *during trial*, this Court stated it has “long recognized that a prisoner is entitled to be brought into the presence of the court free from restraints.” 144 Wn.2d at 690. Then, despite the fact that no prior Washington case expressly found a constitutional right to be free from restraints during pretrial proceedings, the Court of Appeals stated in 2015, “*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.” *State v. Walker*, 185 Wn. App. 790, 797, 344 P.3d 227, *review denied*, 183 Wn.2d 1025 (2015) (emphasis added) (addressing the defendant’s right to be free from restraints *at sentencing*).

In this case, the Court of Appeals below found the trial court erred by allowing the defendant to remain restrained during a non-jury, non-penalty phase proceeding – the defendant’s first appearance – without first conducting a hearing to determine whether the defendant posed an imminent risk of escape, intended to injure someone in the courtroom, or could not behave in an orderly manner. *Jackson*, 10 Wn. App. 2d at 147-48;

*see also, State v. Lundstrom*, 6 Wn. App. 2d 388, 429 P.3d 1116 (2018), *review denied*, 193 Wn.2d 1007 (2019) (addressing a similar claim, but affording no relief as none was requested). This decision has serious implications for trial courts across the state, and is a precedent which leads to absurd results.<sup>1</sup>

Judges are presumptively capable of disregarding inadmissible evidence; they should also be presumed capable of setting aside any prejudice that potentially could result from an accused’s routine, pretrial court appearance while wearing restraints. Many of the additional reasons cited above supporting the rule that a defendant should not be restrained during trial or sentencing without cause also collapse for pretrial proceedings. In its ruling on this matter, WAPA urges this Court to provide

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<sup>1</sup> Few other states have addressed this precise issue; the precedent that does exist, however, supports the conclusion that due process rights are only implicated by restraint at trial or sentencing hearings. In *People v. Goldston*, 126 A.D.3d 1175, 5 N.Y.S.3d 600 (2015), the Supreme Court of New York, Appellate Division, noted:

In *Deck v. Missouri* ..., the United States Supreme Court held that the US Constitution “forbid[s] [the] routine use of visible shackles during the guilt phase” of the trial and “permits a [s]tate to shackle a criminal defendant only in the presence of a special need” ... Consistent with that principle, the Court of Appeals has determined that, “as a matter of both federal and state constitutional law, ‘[a] defendant has the right to be free of visible shackles, unless there has been a case-specific, on-the-record finding of necessity.’” ... Although this prohibition has been extended to bench trials ... we discern no basis upon which to afford a criminal defendant the same protection in the context of a pretrial hearing.

*Id.* at 1177 (bracket alterations in original).

clear direction to trial courts, detention facilities and legal practitioners, detailing under what circumstances a trial court must make an individualized determination before permitting the use of restraints upon a criminal defendant making a pretrial appearance in court.

## V. ARGUMENT

### A. A JUDGE IS PRESUMED TO BE ABLE TO DISREGARD THAT WHICH A JURY MAY HAVE DIFFICULTY DISREGARDING.

One reason cited for prohibiting the restraint of a defendant during the guilt or penalty phase of a criminal proceeding, without first determining whether less-restrictive alternatives exist, is the likelihood that prejudice will develop in the minds of jurors, depriving the defendant of a fair trial, or eroding the defendant's presumption of innocence. *See In Re Davis*, 152 Wn.2d at 693. These justifications and policy considerations do not exist for pretrial proceedings occurring solely before a judge.

In *United States v. Zuber*, 118 F.3d 101 (2d Cir. 1997), the Second Circuit rejected the claim that a defendant's due process rights were violated by the use of restraints during his non-jury sentencing hearing. Among the reasons supporting the decision, the court noted that:

We traditionally assume that judges, unlike juries, are not prejudiced by impermissible factors, *see, e.g., LiButti, v. United States*, 107 F.3d 110, 124 (2d Cir. 1997) ([M]any of the management problems which a trial court invariably has to wrestle with in order to guard against unfair prejudice when one takes the proverbial Fifth simply do not exist in the context of a bench trial."); *Anderson v. Smith*, 751 F.2d 96, 106 (2d Cir. 1984) (“[A] judge conducting a bench trial can

hear evidence that he ultimately determines to be inadmissible without prejudice to his verdict”), and we make no exception here.

118 F.3d at 104 (alterations in original); *see also State v. Read*, 147 Wn.2d 238, 244, 53 P.3d 26 (2002) (trial judge presumed to disregard inadmissible evidence); *State v. Jefferson*, 74 Wn.2d 787, 792, 446 P.2d 971 (1968) (same).

As a result, the *Zuber* court presumed that, in the context of a non-jury sentencing hearing, the judge “will not permit the presence of the restraints to affect its sentencing decision.” 118 F.3d at 104. Certainly then, a trial court can also disregard the presence of restraints during other hearings as well – such as first appearances, arraignments or omnibus hearings.

Additionally, even when a trial court decides that restraints may be used during a jury trial, most jurisdictions hold that, if those restraints are visible, the court should instruct the jury that the presence of restraints must be disregarded. *See e.g., State v. Purcell*, 117 Ariz. 305, 572 P.2d 439 (1977) (where jurors saw defendant being brought to court in handcuffs, it was proper for trial court to instruct jurors that they were not to draw any inferences against the defendant because they saw him handcuffed – this admonition protected the defendant from potential prejudice). Juries are presumed to follow the court’s instructions. *See e.g., State v. Swan*, 114 Wn.2d 613, 661-62, 790 P.2d 610 (1990), *as clarified on denial of reconsideration* (June 22, 1990).

If a jury is presumed to follow the court's instruction to disregard the presence of visible restraints, and trial judges are presumed to be capable of disregarding inadmissible evidence during trial, then it stands to reason that trial judges are also able to disregard the presence of restraints upon a defendant during routine pretrial hearings. Thus, the defendant's argument below – that a defendant is inherently prejudiced when a trial court views him or her in shackles during routine court proceedings<sup>2</sup> – collapses when this Court applies the presumption that trial courts act without bias or prejudice in discharging their duties. *In Re Davis*, 152 Wn.2d at 692. Washington's trial judges are capable of, and duty-bound to, disregard the presence of a defendant's pretrial restraints.

**B. THE PRESUMPTION OF INNOCENCE IS NOT AT STAKE DURING ROUTINE PRETRIAL HEARINGS.**

In a similar vein, the concern that a defendant's appearance in restraints erodes the presumption of innocence also fails where the defendant's restrained appearance occurs prior to trial and solely before a judge. The presumption of innocence, at stake during trial, is not at stake during pretrial hearings.

The presumption of innocence is a doctrine that allocates the burden of proof in criminal trials; it also may serve as an admonishment to

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<sup>2</sup> See Br. of Appellant at 26; *see also Jackson*, 10 Wn. App. 2d at 154 (Melnick, J. concurring) (arguing that judges are susceptible to implicit bias by the mere sight of a defendant in restraints).

the jury to judge an accused's guilt or innocence solely on the evidence adduced at trial and not on the basis of suspicions that may arise from the fact of his arrest, indictment, or custody, or from other matters not introduced as proof at trial... Without question, the presumption of innocence plays an important role in our criminal justice system. "The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law." ... *But it has no application to a determination of the rights of a pretrial detainee during confinement before his trial has even begun.*

*Bell v. Wolfish*, 441 U.S. 520, 533, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979) (emphasis added) (internal citations omitted).

This concept was recognized by this Court in *State v. Clark*, in which this Court held that the defendant was not prejudiced when a jury viewed him in shackles on the first day of jury selection and on the day that the verdict was returned because, during the balance of the trial, he was unrestrained, and "the presumption of innocence was not at stake on the day the verdict was read." 143 Wn.2d 731, 776, 24 P.3d 1006 (2001).

Thus, the pretrial use of restraints at times when no findings of fact pertaining to the defendant's guilt are made does not implicate a defendant's presumption of innocence, and is presumptively disregarded by the trial court in discharging its duties.<sup>3</sup>

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<sup>3</sup> Here, the record is devoid of what, if any, concrete effect the defendant's restraints had upon the judge presiding over his first appearance.

**C. THE USE OF RESTRAINTS DURING ROUTINE PRETRIAL HEARINGS ENHANCES THE SAFETY AND DIGNITY OF THE COURT.**

The use of restraints does not offend the dignity of the court during pretrial proceedings where there is no jury and during which a defendant's guilt or punishment is not considered. The dissent to the now-vacated decision in *United States v. Sanchez-Gomez*, 859 F.3d 649 (9th Cir. 2017), *vacated and remanded on other grounds*, 138 S. Ct. 1532 (2018), sharply criticized the majority opinion's failure to acknowledge the potential dangers of criminal law practice in trial courts when it ruled upon an issue similar to that presented here:

Far removed from the potential dangers of the trial court the majority holds that criminal defendants whose cases are now moot can use their individual appeals as a vehicle to invalidate the prospective application of a federal district court's policy of deferring to the U.S. Marshals Service on questions of courtroom security... We should not be hearing this case at all, much less using it to announce a sweeping and unfounded new constitutional rule with potentially grave consequences for state and federal courthouses.

*Id.* at 666 (Ikuta J., dissenting).

Those potentially grave consequences are very real to prosecutors, defense attorneys, judges, witnesses and others present in court, including criminal defendants. Violent assaults in courthouses, committed by

unshackled<sup>4</sup> criminal defendants, are not an uncommon headline in today's news.<sup>5</sup>

WAPA urges this Court to be mindful of the potential dangers inherent in criminal trial court practice when reaching its decision in this case. One of the considerations enunciated by the court below for prohibiting the shackling of defendants during non-trial proceedings is that the practice of shackling defendants affronts the dignity of the judiciary and the defendant. WAPA suggests that it is *also* an affront to the dignity of the judiciary to risk injury upon *anyone* involved in pretrial judicial

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<sup>4</sup> WAPA acknowledges that shackled defendants may also commit courtroom assaults as well.

<sup>5</sup> See, e.g., Joe Utter, *Inmate allegedly assaults corrections deputy, tries to take gun during Tuesday court hearing*, Dec 11, 2018, [http://www.ifiberone.com/columbia\\_basin/inmate-allegedly-assaults-corrections-deputy-tries-to-take-gun-during-tuesday-court-hearing/article\\_c9acbc66-fd7e-11e8-a0367b38a80f1091.html](http://www.ifiberone.com/columbia_basin/inmate-allegedly-assaults-corrections-deputy-tries-to-take-gun-during-tuesday-court-hearing/article_c9acbc66-fd7e-11e8-a0367b38a80f1091.html) (unshackled inmate accused of shooting at police officers punched corrections officer during court and tried to take his gun); Associated Press, *Suspect Killed in Courtroom Attack on Judge*, March 4, 2009, <https://www.nbcbayarea.com/news/local/suspect-killed-in-courtroom-attack-on-judge/1867642/> (while testifying, defendant “who had not caused any trouble as the case moved forward” stabbed judge); Mariah Noble, *Video from controversial 2014 fatal Utah courthouse shooting released, shows man jumping at witness with pen*, The Salt Lake Tribune, March 12, 2018, available at <https://www.sltrib.com/news/2018/03/12/video-from-controversial-2014-fatal-utah-courthouse-shooting-released-shows-man-jump-at-witness-with-pen/> (criminal defendant attacked shackled witness); Peter Burke, *Video: Defendant punches lawyer in head in Florida court*, March 28, 2019, <https://www.clickorlando.com/strange-florida/2019/03/28/video-defendant-punches-lawyer-in-head-in-florida-court/> (unrestrained defendant in “bond court” punched defense attorney during a different client’s hearing).

proceedings, including defendants themselves.<sup>6</sup> Even the legislature has recognized the seriousness of assaultive behavior in and near courtrooms, elevating simple assault to third degree assault, a felony. *See* RCW 9A.36.031(k). As above, because a defendant's guilt or innocence is not under consideration during pretrial proceedings such as the first appearance, the security of *all* individuals in the courtroom outweighs any conceivable prejudice a defendant could potentially suffer by a pretrial appearance in restraints.<sup>7</sup>

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<sup>6</sup> In two of the articles above, the defendants who committed assaults during court were killed in the courtroom by law enforcement officers. *See* Mariah Noble, *Video from controversial 2014 fatal Utah courthouse shooting released, shows man jumping at witness with pen, supra* (Defendant shot four times by federal marshal); Associated Press, *Suspect Killed in Courtroom Attack on Judge, supra* (Police officer killed defendant after defendant stabbed judge in the neck).

<sup>7</sup> In *Deck v. Missouri*, the dissent discussed the historical underpinnings supporting the notion that restraining defendants absent cause offends the dignity of the court. Historically, shackles worn by defendants differed from those used today; they were heavy, painful, and oftentimes worn by defendants not only during court but also during confinement. 544 U.S. at 638-40 (Thomas, J. dissenting).

A modern-day defendant does not spend his pretrial confinement wearing restraints. The belly chain and handcuffs are of modest, if not insignificant, weight. Neither they nor the leg irons cause pain or suffering, let alone pain or suffering that would interfere with a defendant's ability to assist in his defense at trial. And they need not interfere with a defendant's ability to assist his counsel—a defendant remains free to talk with counsel ... and restraints can be employed so ... a defendant can write to his counsel during the trial ... Modern restraints are therefore unlike those that gave rise to the traditional rule.

*Id.* at 640.

**D. TAKEN TO ITS LOGICAL END, THE DECISION BELOW  
COULD ERODE WELL-ESTABLISHED LAW AND STRAIN  
FINANCIAL AND HUMAN RESOURCES.**

Taken to its logical end, the rule below has serious implications for both human and financial resources, especially in high-volume courts, and potentially could lead to the unwarranted and illogical erosion of other well-settled criminal procedural law. For example:

- It is well-settled that a defendant cannot be constitutionally compelled to attend his or her trial wearing jail attire identifiable by the jury as such. *Estelle v. Williams*, 425 U.S. 501, 96 S.Ct. 1691, 48 L.Ed.2d 126 (1976). Yet, if this Court presumes trial courts are susceptible to unconscious bias against restrained defendants, then, presumptively, the trial courts would also be susceptible to prejudice resulting from the pretrial observation of a defendant in jail attire. This is illogical as, generally speaking, trial courts know which defendants are incarcerated pretrial and which are not. Furthermore, if *Estelle* were to be extended to pretrial court appearances, detention services would likely be overburdened by accommodating defendants' requests to dress in street-clothes, which, in turn, could result in significant court delays. Courts and defense agencies could also experience additional expense in procuring a sufficient number of garments appropriate for incarcerated

defendants to wear to court for routine (and often brief) hearings, especially in high-volume district courts.

- This Court has held that a defendant may not be tried by a jury in a jail courtroom as such a trial violates due process by eroding the presumption of innocence. *State v. Jaime*, 168 Wn.2d 857, 860, 233 P.3d 554 (2010), *as amended on denial of reconsideration* (Sept. 30, 2010). If this Court presumes that the presence of restraints during routine pretrial hearings erodes the presumption of innocence and prejudices the trial court judge against the defendant, then holding pretrial hearings in jail courtrooms could have the same effect. Such a rule would render jail courtrooms useless, even for brief and routine hearings.
- It is generally accepted that the routine use of security personnel in a courtroom during trial generally is not an inherently prejudicial practice; however, under certain conditions, the presence of security officers in the courtroom might convey the impression that a defendant is dangerous or untrustworthy. *Holbrook v. Flynn*, 475 U.S. 560, 568-69, 106 S.Ct. 1340, 89 L.Ed.2d 525 (1986). If this Court were to hold that trial judges are subject to bias resulting from observing criminal defendants in restraints, then, potentially, it would also offend the Constitution to allow the transportation of shackled defendants into the

courtroom while the judge is present, or to permit defendants merely awaiting their hearing in a courtroom to remain restrained if the judge is able to view or hear those restraints. If such were the case, in order to maintain the security of the courtroom when occupied by multiple incarcerated-but-unrestrained defendants, additional transport officers or security personnel would likely be needed. *See e.g. Snohomish Cty. Sheriff v. Gonzalves*, No. 79426-4, 2020 WL 1487205 at \*3-6 (March 23, 2020) (describing transport operations in Snohomish County and the safety concerns of transport officers when working with pretrial detainees with whom officers have little familiarity). The necessity of having additional transport officers attend routine court hearings could financially burden county governments already suffering from budget constraints. Lastly, at some point, the additional law enforcement presence needed to ensure the safety of courtrooms occupied by multiple unrestrained defendants would counteract any reduced prejudice those defendants may enjoy from being unrestrained.

- Additionally, if this Court were to find judicial officers susceptible to bias upon viewing a shackled defendant, Washington trial courts would also need to ensure that the judicial officer who hears a defendant's first appearance and sets bail or other conditions of release under CrR 3.2 is not the same judicial officer who presides over the defendant's trial or

other substantive matters. If this Court presumes that trial courts suffer bias against visibly shackled defendants, then, by logical extension, a trial judge who has any knowledge of the reasons why the defendant was not released at first appearance may also be biased against the defendant. This, too, would burden trial courts, especially those in rural jurisdictions with few judges available.

- Lastly, the necessity of holding an additional individualized hearing to determine the propriety of shackling each criminal defendant before every first appearance, arraignment, omnibus hearing, or other pretrial hearing could significantly increase the length of time each hearing requires and, potentially, could double both the human and financial resources necessary for such hearings. Thus, WAPA suggests that once a determination is made to permit the use of pretrial restraints, that decision should remain in effect throughout subsequent proceedings unless the defendant demonstrates a change in circumstances warranting reconsideration.

**E. ANY RULE THAT THIS COURT ADOPTS SHOULD REQUIRE A DEFENDANT TO OBJECT TO THE USE OF SHACKLES.**

Generally speaking, an error at the trial court that is unobjected-to is waived unless it is a manifest constitutional error. RAP 2.5. If this Court were to find that the improper pretrial use of restraints upon an accused

implicates due process, it is conceivable that, even in the absence of an objection below a defendant may attempt to raise an unconstitutional pretrial restraint argument on appeal. This Court should make clear that any error predicated upon an allegation of unconstitutional shackling must be raised in the trial court in order to be preserved.

A defendant may strategically choose not to object to the use of shackles during routine, non-trial and non-sentencing hearings, so as to avoid the jail or prosecutor disclosing to the court all known and unfavorable information supporting the use of pretrial restraints. For example, a defendant may not wish the court to know that detention services found an escape plan in his or her cell or discovered the defendant developed a plot to introduce contraband into the jail. Defendants may wish to avoid the disclosure of other potentially incriminating information as well – gang affiliation, violent criminal history, ongoing witness intimidation, and behavioral infractions in jail including assaultive behavior and threats. Although some of this information may be disclosed at first appearance, and may be known to the court at that time, a defendant may wish to avoid having that information repeated at future hearings.

As a result, the defendant may strategically withhold objection to the use of pretrial restraints. Where a defendant makes no objection to the pretrial use of restraints, there is no reason for the court to make a record as

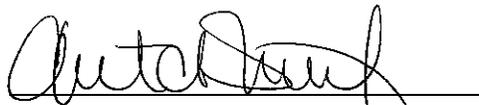
to why those restraints have been permitted. In order to ensure a sufficient record is made in support or against the use of pretrial restraint, this Court should place the onus on the defendant to timely lodge a clear objection to the use of pretrial restraints.

## VI. CONCLUSION

WAPA respectfully requests that this Court recognize that trial courts are presumed to set aside information which otherwise might be considered prejudicial to a defendant in front of a jury. The presumption of innocence is not at stake during pretrial hearings. Therefore, the concerns attendant with the use of restraints during a jury trial are not present when the defendant is restrained during routine pretrial hearings before a judge. A contrary rule could lead to absurd and costly results.

Dated this 23 day of April, 2020.

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

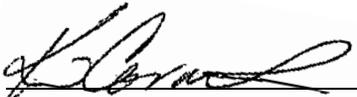
STATE OF WASHINGTON,  Respondent/Cross-Petitioner,  v.  JOHN JACKSON,  Petitioner/Cross-Respondent.	No. 97681-3  CERTIFICATE OF SERVICE
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I certify that on the 23 day of April, 2020, I caused a true and correct copy of this Brief of Amicus Curiae Washington Association of Prosecuting Attorneys to be served on the following via the court's e-filing portal:

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