

June 8, 2021

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

STATE OF WASHINGTON,

No. 50400-6-II

Respondent,

v.

FORREST EUGENE AMOS,

UNPUBLISHED OPINION
ON REMAND FROM
THE SUPREME COURT

Appellant.

WORSWICK, J. — On April 28, 2020, we filed an unpublished opinion affirming Forrest Amos’s convictions and sentence for four counts of forgery and four counts of first degree criminal impersonation. *State v. Amos*, 13 Wn. App. 2d 1040 (2021). Our Supreme Court granted Amos’s petition for review in part and remanded to us for reconsideration only on the issue of whether Amos was unconstitutionally shackled during trial in light of *State v. Jackson*, 195 Wn.2d 841, 467 P.3d 97 (2020).¹ *State v. Amos*, 197 Wn.2d 1007, 484 P.3d 1262 (2021).

We set out the majority of the facts in our original opinion and need not repeat them here. The only issue before us is the proper remedy on remand as to Amos’s restraints during trial. Amos argues that he was unconstitutionally physically restrained during the trial. We hold that Amos’s physical restraint was harmless, and thus, we affirm Amos’s convictions.

¹ In *Jackson*, our Supreme Court held that the State bears the burden to prove that unconstitutional shackling was harmless beyond a reasonable doubt, abrogating *State v. Hutchinson*, 135 Wn.2d 863, 959 P.2d 1061 (1998).

RELEVANT FACTS

This case arises out of Amos's attempt to file documents with the Lewis County Superior Court regarding the Lewis County prosecutor, a Lewis County deputy prosecutor, and two City of Centralia police detectives. As a result of Amos filing these documents, the State charged Amos with four counts of forgery and four counts of first degree criminal impersonation.

On June 7, 2017, before Amos's trial started, the trial court and parties addressed a number of issues, including Amos's leg restraint. Verbatim Transcript of Proceedings (VTP) (June 7, 2017) at 51. The following exchange occurred:

MR. AMOS: One quick question, your Honor, before we take a recess. Is there a possibility that I can object to this leg brace being on my leg since I've got to get up and like talk to a jury and stuff? It's kind of awkward.

THE COURT: No. That's got to stay on. That's jail policy. I'm not going to direct that, because you just need to—you've got to work with it.

MR. AMOS: Right here in our jury box it's like looking directly at this side of me. I understand I've got to work with it, but I think it's still prejudicial. I've never had any kind of eludes or any kind of attempts to do anything. We have an officer right here. I mean, that's not—I'm just kind of—

THE COURT: I understand that but—

MR. AMOS: I'm just concerned about the prejudicial effect of this.

THE COURT: Well, I will tell you I didn't notice that you had anything on until you said that. And I—that is minimally intrusive. You know, it's not something they can see. The only thing that is going to happen is you are going to reach down to your knee and hit the release when you sit down, and that's the only thing that's going to happen. So that has to stay on.

MR. AMOS: All right.

THE COURT: All right. I don't think that it's going to be an issue for here, but there is—we have had other people who have tried to bolt, and it's just—it's a security—it's a safety thing, and it's just something that we need to deal with it.

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MR. AMOS: All right.

[THE STATE]: If I could just make a record, your Honor, it appears that there is no exterior discernible protruding item that at all shows through the clothing of the defendant, at least not from this view, and I don't see anything either. So for the record—

MR. AMOS: You [sic] looking at the wrong leg just for the record.

THE COURT: Well, but there's nothing—it's all contained. It's underneath your pant leg, correct?

MR. AMOS: Yes.

THE COURT: Okay. All right. We will take a recess.

VTP (June 7, 2017) at 51-52.

During the trial, Amos moved around the courtroom in front of the jury. Amos handed documents to witnesses and approached the bench. When Amos presented his defense, the trial court directed Amos to “come on up” to testify in the presence of the jury. 3 Verbatim Report of Proceedings (VRP) at 296. Other than Amos’s objection, there is no further mention of the leg restraint. And nothing in the record on appeal shows or suggests that the jury noticed Amos’s leg restraint.

The jury found Amos guilty of four counts of forgery and four counts of first degree criminal impersonation.

ANALYSIS

Amos argues that the trial court abused its discretion by requiring Amos to wear a leg restraint. The State concedes that the trial court abused its discretion, but argues that the error was harmless beyond a reasonable doubt. We agree with the State.

The presumption of innocence is a fundamental component of a fair trial. *State v. Jaime*, 168 Wn.2d 857, 861, 233 P.3d 554 (2010). To preserve the presumption of innocence, a defendant is “entitled 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 [person].” *Jaime*, 168 Wn.2d at 861-62 (quoting *State v. Finch*, 137 Wn.2d 792, 844, 975 P.2d 967 (1999)).

A trial court also has a duty to provide for courtroom security, and may exercise its discretion to implement measures needed to protect the safety of court officers, parties, and the public. *State v. Hartzog*, 96 Wn.2d 383, 396, 635 P.2d 694 (1981). In exercising discretion, the trial court must bear in mind a defendant’s right “to be brought into the presence of the court free from restraints.” *State v. Damon*, 144 Wn.2d 686, 690, 25 P.3d 418 (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 (2015).

Courts recognize that physical restraints are inherently prejudicial to the defendant. *Finch*, 137 Wn.2d at 845-46. Restraints should be allowed “only after conducting a hearing and entering findings into the record that are sufficient to justify their use on a particular defendant.” *Walker*, 185 Wn. App. at 800. The trial court must engage in this individual inquiry prior to every court appearance. *Jackson*, 195 Wn.2d at 854. The trial court’s determination must be based on specific facts in the record that relate to the particular defendant. *Jaime*, 168 Wn.2d at 866.

We review a trial court's decision to keep a defendant restrained for abuse of discretion. *State v. Turner*, 143 Wn.2d 715, 724, 23 P.3d 499 (2001). A trial court's failure to exercise its discretion when considering a courtroom security measure constitutes constitutional error. *State v. Lundstrom*, 6 Wn. App. 2d 388, 394, 429 P.3d 1116 (2018), *review denied*, 193 Wn.2d 1007 (2019). Deferring to general jail policy without an individual inquiry is an abuse of discretion and constitutional error. *Lundstrom*, 6 Wn. App. 2d at 395.

A claim for unconstitutional physical restraint is subject to a harmless error analysis. *Jackson*, 195 Wn.2d at 855-56. If an error violates a defendant's constitutional right, it is presumed to be prejudicial. *Finch*, 137 Wn.2d at 859. But the State may overcome this presumption by showing that the error was harmless beyond a reasonable doubt. *Jackson*, 195 Wn.2d at 856.

In *Jackson*, the trial court failed to conduct an individualized inquiry into whether the defendant needed to be restrained. 195 Wn.2d at 844, 857. Jackson was shackled during trial and the record there showed that Jackson therefore remained seated for his oath and on the witness stand. *Jackson*, 195 Wn.2d at 848, 857. The only mention in the record there as to whether the restraint was visible was Jackson's statement to the trial court that the jury could see his restraint when he was in the witness box. *Jackson*, 195 Wn.2d at 857. Our Supreme Court reversed Jackson's conviction, holding that the State had failed to prove that the error was harmless beyond a reasonable doubt. *Jackson*, 195 Wn.2d at 858.

Here, the trial court abused its discretion because it failed to conduct an adequate hearing or enter findings sufficient to justify Amos's leg restraint. Amos objected to the leg restraint, but the trial court ruled that Amos would remain restrained during trial. The trial court failed to

conduct an individual inquiry and failed to enter any findings about the leg restraint. The court merely deferred to jail policy as the justification for the restraint. We hold that the trial court abused its discretion and that Amos's restraint was a constitutional error.

As stated above, unconstitutional shackling is subject to a harmless error analysis.

Jackson, 195 Wn.2d at 855. The State is required to show that this error was harmless beyond a reasonable doubt. *Jackson*, 195 Wn.2d at 856. It does so here.

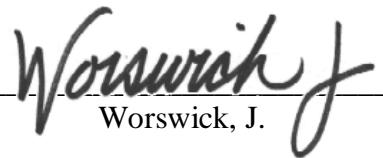
This case differs from *Jackson*. The record here shows that neither the trial court judge nor the prosecutor saw anything protruding under Amos's pant leg. The record also shows that throughout the trial, Amos moved around the courtroom in front of the jury. Amos handed documents to witnesses and approached the bench. When Amos was presenting his defense, the trial court directed Amos to "come on up" to testify in the presence of the jury. 3 VRP at 296.

On appeal, Amos states that the leg restraint interfered with his ability to move around while presenting his defense. He argues that the leg restraint encumbered his movements but the record on appeal shows otherwise. Amos even acknowledges that "[i]t is not clear from the record" whether his movements were impeded. Brief of Appellant at 15. Amos, acting as his own counsel, moved throughout the courtroom in the presence of the jury. Nothing in the record on appeal shows that the jury noticed Amos's leg restraint. Indeed, the trial court judge did not notice the restraint until Amos called it to his attention. Because the record shows that the leg restraint was not visible and that Amos was able to freely move around the courtroom and step into the witness box, we hold that the State has shown that the error was harmless beyond a reasonable doubt.

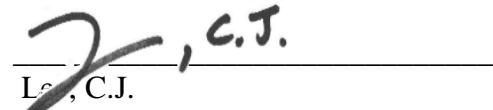
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Accordingly, we hold that Amos's physical restraint was harmless. We affirm Amos's convictions.

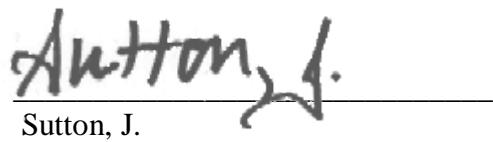
A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.



Worswick, J.



L., C.J.



Sutton, J.