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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By

No. 25821-1-III

COURT OF APPEALS, DIVISION III
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

JAMES FRANK JAIME,

Appellant.

On Appeal from the Yakima County Superior Court
Cause No. 05-1-03114-5
The Honorable Blaine Gibson, Judge

REPLY BRIEF OF APPELLANT

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I. ARGUMENT & AUTHORITIES IN REPLY TO STATE'S BRIEF

Over defense objection, the lower court ruled that James Jaime's trial should be held in the jail courtroom based on security concerns and administrative convenience. (I RP 40) In his Opening Brief, Jaime challenged this ruling, arguing that it violated his constitutional right to a fair trial and an impartial jury. Because the trial court's decision was based in large part on security concerns, Jaime looked to Washington law regarding the use of restraints or jail garb at trial as analogous authority.

In response, the State argues that holding a criminal trial in a jail courtroom is not equivalent to the use of restraints because this particular security measure is effectively concealed from the jury. (Brief of Respondent at 6) The State also argues that Jaime's claim should fail because he has not shown that the mere fact of the jail location is prejudicial in the same way as other visible security restraints. (Brief of Respondent at 8-9)

The State asks this Court to follow the Arkansas Supreme Court's holding in *Walley v. State of Arkansas*, 353 Ark. 586, 112 S.W.3d 349 (Ark. 2003). In that case, the court rejected a similar argument because Walley did not present any "authority for his contention that the location of the courtroom was inherently

prejudicial.” 353 S.W.3d at 356. But such authority does exist.

For example, in *State of Oregon v. Cavan*, 337 Ore. 433, 98 P.3d 381 (Ore. 2004), when faced with a similar challenge to a trial conducted in a prison facility, the Oregon Supreme Court noted:

[W]e refuse to accept the state's underlying (but unstated) premise that, without evidence to the contrary, we should presume that jurors are indifferent to their surroundings. Our 200-year American jury trial tradition informs us that exactly the opposite is true. . . . "Holding a trial within the walls of a facility designed to segregate violent or dangerous persons from the public at large implies that there is some need for security measures above and beyond those of a normal trial. . . . the decision to hold a trial at a prison is such a departure from the ordinary course and the risk of singling defendant out in some impermissible way is sufficiently great, that we hold that the practice is inherently prejudicial[.]"

98 P.3d at 388 (quoting *State of Oregon v. Cavan*, 185 Ore. App. 367, 59 P.3d 553, 558 (Ore. App. 2002)) (footnoted omitted). It has also been noted that “[a]ny judge who has sat with juries knows that in spite of forms they are extremely likely to be impregnated by the environing atmosphere.” *Frank v. Magnum*, 237 U.S. 309, 349, 35 S. Ct. 582, 59 L. Ed. 969 (1915) (Holmes, J. dissenting).

This supports the argument set out in detail by Jaime in his opening brief that a courtroom located in a jailhouse is inherently prejudicial. Jaime does not have to show that the jurors were

actually influenced by the jailhouse location, just that the location is so inherently prejudicial that an “unacceptable risk of prejudicial effect” is presented. *Walley*, 353 S.W.3d at 355 (quoting *Clemmons v. State*, 303 Ark. 265, 267, 795 S.W.2d 927, 928 (Ark. 1990)).

As stated in the Opening Brief, a jail’s purpose and environment are vastly different from that of a public courthouse. It infers dangerousness, and therefore guilt, upon a defendant. This, coupled with heightened security measures present in the jail, creates an ominous atmosphere that would be nearly impossible for a reasonable juror to ignore during trial and deliberations, and could therefore affect a juror’s ability to remain impartial.

As noted in *Cavan*, only one state, Utah, unequivocally allows the practice of trials in a prison or jailhouse setting, while others “limit the practice” depending on the nature of the facility and safety concerns. *Cavan*, 98 P.3d at 388 f.n. 6.

Moreover, cases from other jurisdictions have noted additional constitutional concerns with a jail courtroom location. For example, in *State ex rel. Varney v. Ellis*, 149 W. Va. 522, 142 S.E.2d 63, 65, (W. Va. 1965), the West Virginia Supreme Court held that “[h]olding a trial in the office of the jailer, as was done in

the instant case, does not, in our opinion, afford an opportunity for a public trial in the ordinary common-sense acceptance of the term, public trial.” The Oregon Court of Appeals also considered this issue in *Cavan*, finding that the facts in the record before that court showed that the public did have adequate access to the prison courtroom, so no public trial violation occurred in that case. *Cavan*, 59 P.3d at 555.

Clearly, however, under certain circumstances, holding a trial inside a jail may impact the right to a public trial, as guaranteed by the Sixth Amendment to the United States Constitution and by article I, section 22 of the Washington State Constitution. There is no record in this case establishing whether and to what extent Yakima County jail policies may impact the public’s ability to attend a trial within the confines of the jail. But any such facts should be considered by a trial court before making a decision that trial inside a jail courtroom is appropriate.

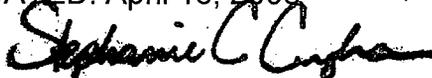
This Court should find that the jailhouse courtroom is an inherently prejudicial location, and that such prejudice must be considered and balanced against a defendant’s constitutional rights to a fair trial, to an impartial jury, to the presumption of innocence, and to a public trial. U.S. CONST. amends. VI, XIV § 1; WASH.

CONST. art. I, §§ 3, 21, 22. Only if security or other concerns outweigh the inherently prejudicial impact of a jailhouse courtroom, should a trial court allow a defendant to stand trial in such a location.

II. CONCLUSION

The trial court did not balance any of Jaime's constitutional rights against the asserted security concerns in this case. The trial court did not consider alternative security measures that could have been put in place at the courthouse. The trial court simply chose expediency and administrative convenience over Jaime's constitutional protections. For these reasons, and as argued in the Opening Brief of Appellant, Jaime's conviction should be reversed.

DATED: April 16, 2008



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CERTIFICATE OF MAILING

I certify that on 04/16/2008, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to:

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