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No. 258211

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
3v 

IN THE COURT OF APPEALS OF THE  
STATE OF WASHINGTON

DIVISION III

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STATE OF WASHINGTON,

Respondent,

vs.

JAMES FRANK JAIME,

Appellant.

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APPEAL FROM THE SUPERIOR COURT  
OF YAKIMA COUNTY, WASHINGTON

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THE HONORABLE BLAINE G. GIBSON, JUDGE

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BRIEF OF RESPONDENT

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I. ASSIGNMENTS OF ERROR

A. ISSUES PRESENTED BY ASSIGNMENTS OF ERROR.

1. Whether the trial court erred when it ordered that the trial be held in a secure courtroom of the Yakima County jail?
2. Whether Jaime's State and Federal due process rights, as well as his presumption of innocence, were violated as a result of the trial being held in the secure courtroom?
3. Whether the trial court erred when it denied a defense request to call an expert witness to testify about the reliability of eyewitness identifications?

B. ANSWERS TO ASSIGNMENTS OF ERROR.

1. The trial court properly exercised its discretion in conducting the trial in the jail courtroom, as it identified reasons why the courtroom was better suited for the safety of witnesses, staff and attorneys.
2. Jaime's due process rights were not violated, as the court sought to reduce the chance that Jaime would be sighted by jurors while wearing shackles or handcuffs. Also, the existence of any unusual security provisions at all was

concealed from the jury, which was not even told that Jaime was in custody.

3. The trial court properly exercised its discretion when it denied Jaime's request to call an expert witness to testify about the reliability of eyewitness identification, as four witnesses identified Jaime as the shooter, one of whom had known Jaime for several years.

## II. STATEMENT OF THE CASE

The Statement of Facts contained in Jaime's opening brief is generally accurate, though the State submits the following supplement of that narrative.

The trial court, when electing to conduct Mr. Jaime's jury trial in a jail courtroom, identified allegations of threats against witnesses, Jaime's history of violent behavior and escape attempts from the jail as factors. The court concluded that the secure courtroom was better suited for the safety of witnesses, staff and attorneys, and that furthermore, the court wished to prevent the jury from possibly seeing Mr. Jaime in shackles or handcuffs, as would be more likely if he were to be transported back and forth from the jail to the courthouse. (10-2-06 RP 40-41)

The court took an additional step to conceal the fact that there were any unusual security provisions at all, informing the jury from the outset of the trial that the use of the jail courtroom was due to the number and convenience of jury deliberation rooms, and that the longer trial was scheduled to take place there by the court administrator. (10-30-06)

### III. ARGUMENT.

1. Conducting Jaime's trial in a jail courtroom was not equivalent to an unconstitutional shackling or physical restraint.

A defendant is generally entitled to appear free from physical restraint at trial. State v. Monschke, 133 Wn. App. 313, 336, 135 P.3d 966 (2006), *citing* In re Personal Restraint of Davis, 152 Wn.2d 647, 693, 101 P.3d 1 (2004). This is so because the appearance of prison garb, shackles or other restraints "may reverse the presumption of innocence by causing jury prejudice," and deny due process. State v. Hutchinson, 135 Wn.2d 863, 887, 959 P.2d 1061 (1998) (citations omitted), *cert. denied* 528 U.S. 922 (1999). The right to appear free from physical restraint, however, must be balanced against the State's interest in an orderly trial. State v. Flieger, 91 Wn. App. 236, 241, 955 P.2d 872 (1998).

A trial court, furthermore, has inherent authority to determine what security measures are necessary to maintain decorum in the courtroom and to protect the safety of courtroom occupants. Restraints may be used if

they are necessary to prevent escape, injury, or disorder in the courtroom.

State v. Damon, 144 Wn.2d 686, 691, 25 P.3d 418, 33 P.3d 735 (2001).

When deciding to provide additional security measures, the trial court must consider the so-called ‘Hartzog’ factors:

[T]he seriousness of the present charge against the defendant; defendant’s temperament and character; his age and physical attributes; his past record; past escapes or attempted escapes, and evidence of a present plan to escape; threats to harm others or cause a disturbance; self-destructive tendencies; the risk of mob violence or of attempted revenge by others; the possibility of rescue by other offenders still at large; the size and mood of the audience; the nature and physical security of the courtroom; and the adequacy and availability of alternative remedies.

State v. Hartzog, 96 Wn.2d 383, 400, 635 P.2d 694 (1981).

In order to overturn a jury’s verdict, a defendant challenging the use of restraints must make a threshold showing that the restraints had a “substantial or injurious effect or influence on the jury’s verdict.” Davis, 152 Wn.2d at 694, *citing* Hutchinson, 135 Wn.2d at 888. This requires a showing that the jury either saw the restraints, or that the restraints substantially impaired the defendant’s ability to assist in his defense. State v. Finch, 137 Wn.2d 792, 845, 975 P.2d 967, *cert. denied*, 528 U.S. 922 (1999). A defendant contesting the presence of additional security personnel must be able to show jury prejudice. State v. Basford, 1 Wn. App. 1044, 1050-51, 467 P.2d 352 (1970).

The standard for appellate review in such cases is whether the trial court abused its broad discretion to provide for order and security in the courtroom. Hartzog, 96 Wn.2d at 401. *See also*, State v. Breedlove, 79 Wn. App. 101, 113-14, 900 P.2d 586 (1995).

Jaime argues on appeal that being forced to stand trial in a courtroom within the walls of the jail is no less prejudicial than standing trial while handcuffed, shackled or wearing prison clothing. (**App. Brief, p. 9-10**) His reliance on the authorities cited, however is misplaced.

It is when the court determines that security measures are necessary which “cannot be concealed from the jury”, that the judge must make a record of compelling individualized threat of injury, disorderly conduct, or escape. State v. Gonzalez, 129 Wn. App. 895, 902, 120 P.3d 645 (2005), *citing* Hartzog, 96 Wn.2d at 397-98.

Here, the trial court engaged in just such an inquiry contemplated by Hartzog. There had been allegations of threats against witnesses, and Jaime had a history of violent behavior and escape attempts from the jail, leading the court to conclude that use of the secure courtroom was warranted. Additionally, the court was equally concerned with *preventing* the jury from seeing Mr. Jaime in shackles or handcuffs during transit from the jail to the courthouse. (10-2-06 RP 40-41)

It also cannot be overstated that the trial court effectively concealed the fact of Mr. Jaime's detention, or any security provisions at all, by informing the jury that the use of the jail courtroom was due to the number and convenience of jury deliberation rooms, the length of the trial, and a scheduling decision made by the court administrator. **(10-30-06 RP Supp. 2)**

There being no indication on the record that the jury even knew Jaime was in custody, or that they saw him in jail clothing or physically restrained, there has been no threshold showing that any restraint influenced the jury's verdict.

2. One other state has determined that a trial in a county jail courtroom does not violate a defendant's right to a fair trial.

As the issues raised by the Appellant appear to be of first impression in Washington, a survey of decisions in other jurisdictions is in order.

The Oregon Supreme Court has held that conducting a jury trial in the same prison where an assault of a corrections officer occurred violated a defendant's right, under the Oregon Constitution, to an impartial jury. State of Oregon v. Cavan, 337 Ore. 433, 448-49, 98 P.3d 381, 2004 Ore. LEXIS 677 (2004). The court reasoned that criminal trials are ordinarily held in public courtrooms in a county courthouse, a place where the public

conducts a variety of government business. The “aura of neutrality that is inherent in the public courthouse is due in large part to the public’s perception that the proceedings conducted there are under the control of an independent and impartial judiciary.” Cavan, 337 Ore. at 448. By contrast, the court reasoned, a prison is an inherently dangerous place that the public is ordinarily unlikely to visit. Furthermore, that setting would tend to forcefully convey to the jury that the defendant was too dangerous to be tried in a conventional setting, and the jury was dependent on administrators and the victim’s fellow officers for their own safety. Id.

The Oregon court conducted its own review of similar decisions from other jurisdictions which have addressed trials in prisons. Of those decisions, Utah alone is unequivocal in allowing trials in prisons. Cavan, 337 Ore. at 447, footnote 6 (citations omitted).

Cavan, and the authorities cited therein, are easily distinguished from the facts present here. First and foremost, the trial in that case took place in a prison, as opposed to a county jail. While some aspects of the settings are similar, e.g., jurors and members of the public must pass through a metal detector, they are fundamentally different in purpose and location, the latter situated in the county seat, with public courtrooms and jury deliberation facilities built just for that purpose. Also, the Oregon trial discussed in Cavan was conducted in precisely the same place where

the alleged crime occurred, with testimony vividly highlighting that the defendant was an inmate there. By contrast, the jury here was told that scheduling and availability of facilities required that the trial take place in the secure courtroom, not any connection between Jaime and the facility.

A decision of the Arkansas Supreme Court is more on point. There, the appellant assigned error in much the same terms as Jaime, asserting that the location of his trial in a courtroom in a county detention facility was inherently prejudicial, as it created an appearance of guilt similar to that created where a defendant is forced to wear jail clothing or shackles. Walley v. State of Arkansas, 353 Ark. 586, 598, 112 S.W.3d 349, 2003 Ark. LEXIS 344 (2003). The jurors had to walk past a chain link fence topped with razor wire, down a hallway past the jail and sheriff's office, before arriving in the foyer which opened into the courtroom. The trial court judge issued a curative instruction to the jury, instructing that the fact that the courtroom was attached to the jail and sheriff's office was not to be considered by them in reaching a verdict. Walley, 353 Ark. at 599.

On appeal, Walley was unable to provide any authority for the contention that such a setting was inherently prejudicial, and the court concluded that since he could not show that the location in the jail was any

more prejudicial than a courtroom in the courthouse, his right to a fair trial was not violated. Id.

Likewise, Jaime has not shown that the simple fact of conducting his trial in the jail was prejudicial in the same manner as wearing jail clothing or restraints, and the trial court's decision should be affirmed.

3. The court did not abuse its discretion in excluding the expert testimony as to eyewitness identification.

Admissibility of expert testimony under ER 702 is within the trial court's discretion. State v. Cheatam, 150 Wn.2d 626, 645, 81 P.3d 830 (2003), *citing* State v. Kalakosky, 121 Wn.2d 525, 541, 852 P.2d 1064 (1993). Where eyewitness identification of the defendant is a key element of the State's case, the trial court must carefully consider whether expert testimony on the reliability of eyewitness identification would assist the jury in its assessment of such identification. In making this determination, the trial court should consider the proposed testimony, and the subjects involved in the identification to which the testimony relates. Cheatam, 150 Wn.2d at 649.

Here, the court did not abuse its discretion, finding from a review of the police reports and interviews that there were four witnesses who identified Jaime as the person who shot and killed Ignacio Ornelas. (CP

18; Ex. A-D) One of the witnesses, Shawn Stahlman, had known Jaime for several years. (CP18-19; V RP 307-10; VI RP 375, 376)

A Ms. Deanne Moore identified Jaime from a photo-montage as the person who was with Stahlman at the time of the shooting. (CP 19) Of the four witnesses, she alone could not identify Jaime at trial. (VI RP 441, 448)

Rachel McClaskey and Linda Gange both identified Jaime from photo-montages, as well as in court. (CP 19-20; IV RP 132; VI RP 456)

The trial court further found that the witnesses who were shown photo montages did so independently and without opportunity to communicate with each other. The proffered expert would only be able to testify as to the effects of stress, violence, lighting, the presence of a weapon and racial differences on the reliability of eyewitness identification. All of these factors would be independent of the facts in Mr. Jaime's specific case. (CP 20) The expert testimony would not have been helpful to the trier of fact. State v. Allery, 101 Wn.2d 591, 596, 682 P.2d 312 (1984); Cheatam, 150 Wn.2d at 645.

Unchallenged findings of fact are verities on appeal. State v. Hill, 123 Wn.2d 641, 647, 870 P.2d 313 (1994).

V. CONCLUSION

Based upon the foregoing arguments, this Court should affirm the convictions.

Respectfully submitted this 20<sup>th</sup> day of March, 2008.

  
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