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STATE OF WASHINGTON  
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BY ERIN L. LENNON  
CLERK

Supreme Court No. 101828-2

IN THE SUPREME COURT OF  
THE STATE OF WASHINGTON

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STATE OF WASHINGTON,  
Respondent,

v.

CASSANDRA LEE LUTHI  
Appellant.

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APPELLANT'S REPLY BRIEF

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## **I. REPLY ARGUMENTS**

The State agrees the Cowlitz County Superior Court routinely uses the cage for pretrial hearings. Brief of Respondent at 1-3. The State argues being held in the cage is so different from shackles that its routine use for all pretrial defendants is constitutionally permissible. The State posits that a defendant may be restrained, without inquiry, because the hearing was before a judge, not a jury. The State implies that judges are immune from any bias occasioned by the restraints. Finally, the State appears to argue that because the hearing was held in a “jail courtroom”, there can be no prejudice by further restraining Ms. Luthi.

This Court should reject all of these arguments.

1. The cage pictured in the briefing is a “restraint.”

The right violated here is not right of the accused to be free of some specific type of chains, leg irons or handcuffs. It is the right to appear unrestrained. The right is about appearances--creating a dignified setting for the accused and avoiding any impression that the accused is dangerous,

guilty, or visibly different. In *State v. Jackson*, 195 Wn. 2d 841, 858, 467 P.3d 97 (2020), this Court’s controlling precedent uses the terms “shackling” and “restraints” interchangeably. The Court said on remand, “the court shall make an individualized inquiry into whether *shackles or restraints* are necessary, and for further proceedings consistent with this opinion.” Emphasis added.

The cage, as used by Cowlitz County Superior Court, is a restraint. The pictures submitted by both parties demonstrate the cage makes the defendant appear dangerous, guilty or different from everyone else in the courtroom.

2. The State fails to demonstrate the cage is permissible under *Deck v. Missouri*.<sup>1</sup>

The State does not dispute that *Deck* is controlling and the Court identified three fundamental legal principles adversely affected when the defendant is restrained. These principles are: (1) the presumption of innocence until proven guilty, a presumption undermined by restraining the defendant before a jury; (2) the right to counsel, which restraints can hinder

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<sup>1</sup> 544 U.S. 622, 630–31, 125 S.Ct. 2007, 161 L.Ed.2d 953 (2005).

by interfering with a defendant's ability to communicate with her lawyer and by humiliating and distracting a defendant, potentially impairing his ability to participate in his own defense; and (3) the need for a dignified and decorous judicial process, which may be affronted by the routine use of restraints. *Id.*

Here the use of the cage violates all three of these fundamental principles.

- a. The use of the cage undermined the presumption Ms. Luthi was innocent of the alleged probation violation.

This Court has unequivocally held that a trial court must conduct an inquiry about whether restraints are appropriate “prior to every court appearance.” *Jackson* at 841. The State makes no effort to argue this Court should overturn *Jackson*. Thus, the State’s suggestion the hearing held here was perfunctory or inconsequential is irrelevant. Under *Jackson*, using restraints must not be routine and can be applied only after an individualized hearing. No individualized hearing was held here. The court's failure to exercise discretion constitutes constitutional error.

The State is also incorrect when it minimizes the nature of the hearing where Ms. Luthi was restrained. She was charged with violating the

conditions of her sentence. The judge had to determine whether her denial of the violation was credible. And he ultimately found her violation merited an additional 45 days in jail. This was hardly inconsequential to Ms. Luthi.

The State also argues this Court should accept the trial judge's statement that judges are not biased by the cage. This Court should reject this argument. While commentators cannot locate any studies on judicial bias related to restraints, there is a "growing body of research" that highlights that judges, like everyone else, have implicit bias's when engaging in decision making. Madison Wendt, *Like A Bear on A Chain: Implications of Shackling Defendants in Bench Trials*, Kan. J.L. & Pub. Pol'y, Summer 2020, 403, 414. Any risk of implicit bias is easily solved by eliminating the routine use of the cage.

b. The cage is humiliating and distracting, and physically separated Ms. Luthi from her counsel while placing her inches from a correctional officer.

This Court should reject the State's argument that Ms. Luthi's ability to communicate with her counsel from the cage was unimpaired. The pictures, offered by both parties, show counsel must stand outside the cage and communicate with counsel through mesh with a corrections officer

standing inches behind the defendant. The presence of this officer would deter any unfettered confidential consultation between the lawyer and their client.

The pictures in Ms. Luthi's opening brief came from published media accounts of Cowlitz County Superior Court proceedings. The pictures amply demonstrate that the cage humiliates defendants and depicts them as people not safe to be unrestrained even in (as the State repeatedly notes) the jail courtroom. The State does not seem to take seriously how that how the courts treat individuals when they appear in the courtroom matters to them. It also matters for the public's perceptions. Practices like routine use of the cage are inconsistent with our constitutional protections in the Sixth and Fourteenth Amendments to the United States Constitution and article I, section 22 of the Washington State Constitution.

c. A courtroom is a courtroom no matter its location.

The State appears to place great weight on the fact that Ms. Luthi's hearing took place in a "jail courtroom." This hardly helps the State's case. What need is there for a second cage when Ms. Luthi's hearing is already being held in a jail? What is the reason for its continued use if the proceedings are



already secure? One could argue the only remaining purpose is to humiliate and prejudice the defendant.

It does not matter where a judicial proceeding is held. The proceeding must still comply with the state and federal constitutions. It must still be conducted with decorum, dignity and fairness.

3. The State has failed to demonstrate the use of the cage is harmless beyond a reasonable doubt.

The State has failed to prove beyond a reasonable doubt that the constitutional violation was harmless. *Jackson*, 195 Wn. 2d at 856, *Chapman v. California*, 386 U.S. 18, 20–21, 87 S. Ct. 824, 826, 17 L. Ed. 2d 705 (1967). The cage humiliates the defendant, unfairly prejudices defendants in the eye of the fact finder and the public and violates the dignity and respect essential to fair proceedings in criminal courts.

## **II. CONCLUSION**

This Court should reverse and remand for a hearing where Ms. Luthi can appear free of restraint, with the dignity and self-respect of a

presumptively innocent person at counsel table where she can privately communicate with counsel.

I certify this document is 1,180 words.

Submitted this 19<sup>th</sup> day of October, 2023.

/s/ Suzanne Lee Elliott  
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The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Washington State Supreme Court** under **Case No. 101828-2**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered by other court-approved means to the following attorney(s) or party/parties of record at their regular office / residence / e-mail address as listed on ACORDS / WSBA website:

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- Attorney for other party



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Date: October 19, 2023

# WASHINGTON APPELLATE PROJECT

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## Transmittal Information

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