No. 101828-2

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CASSANDRA LEE LUTHI,

Petitioner.

RESPONDENT'S BRIEF

THOMAS LADOUCEUR, WSBA #19963
Chief Deputy Prosecuting Attorney
Attorney for Respondent

Cowlitz County Prosecuting Attorney
Hall of Justice
312 SW First Avenue
Kelso, WA 98626
(360) 577-3080
Office ID No. 91166

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

PAGE

Cases

I. INTRODUCTION

Within the Cowlitz County jail facility is a courtroom. This courtroom is routinely used for various criminal proceedings including shorter matters such as first appearances and longer matters such as motions. It is not used for jury trials.

For lengthier hearings involving witnesses, inmates will typically sit next to their attorney at a counsel table. For shorter hearings not involving witnesses, inmates will enter a booth from the secured area of the jail. The dimensions of this booth are as follows: the interior is 59 inches wide, 60 inches deep and 97 inches long. The exterior dimensions are approximately 43 x 75 inches. There is a mesh "window" in the booth through which an inmate and counsel can speak. Photographs of the booth are reproduced below. This is the same booth shown in appellant's brief.

II. STATEMENT OF THE CASE

Ms. Luthi pled guilty to delivery of heroin within a school zone on May 6, 2019. She was sentenced pursuant to a mental health sentencing alternative. She appeared in custody on February 3, 2023 for a probation violation hearing. CP3. When her case was called, she stood in the jail booth. Her attorney objected to Luthi being held in what she called "the cage." The court overruled the objection, commenting that it was not at the

same level as shackling, and finding no prejudice to Luthi. CP 9,10.

III. ISSUE PRESENTED

DID THE COURT ERR IN OVERRULING LUTHI'S OBJECTION, AT A POSTCONVICTION PROBATION VIOLATION HEARING, TO REMAINING IN A BOOTH WITHIN THE COWLITZ COUNTY JAIL COURTROOM? WAS THIS JAIL BOOTH ANALOGOUS TO THE INHERENTLY PREJUDICIAL USE OF SHACKLES?

IV. ARGUMENT

The issue in this case is whether requiring Luthi to remain in the jail booth for this brief postconviction proceeding was inherently prejudicial. In many cases, our courts have examined the use of restraint devices such as shackles, manacles, or other such instrumentalities. While in most cases the focus was on the use of shackles, the case law includes jury trials taking place at a jail facility and the use of a prisoner "dock" during a jury trial. In examining an array of factual scenarios, the courts have

categorized some practices as being inherently prejudicial, and other practices as not.

In *State v. Williams*, 18 Wash. 47, 48–49, 50 P. 580, 581 (1897) the defendant had to wear manacles during a jury trial and when the jury viewed the scene of the alleged crime. The court reversed, writing, "the binding of the prisoner in irons is a plain violation of Section 22, art. 1, of our constitution. Id, at 51. In *State v. Finch*, 137 Wash. 2d 792, 844, 975 P.2d 967, 997 (1999), the defendant was "shackled throughout the trial and special sentencing proceeding and also hand-cuffed during the testimony of Margaret Elizares and Thelma Finch." Id, at 842. The Court wrote, "It is well settled that a defendant in a criminal case is entitled to appear at trial free from all bonds or shackles except in extraordinary circumstances. Shackling or handcuffing a defendant has also been discouraged because it tends to prejudice the jury against the accused. Courts have recognized that restraining a defendant during trial infringes upon this right to a fair trial for several reasons. The one most frequently cited is that

it violates a defendant's presumption of innocence. *See Hartzog,* 96 Wash.2d at 398, 635 P.2d 694 ("[r]estraints ... abridge important constitutional rights, including the presumption of innocence")." Id, at 844.

In *State v. Jackson*, 195 Wash. 2d 841, 844, 467 P.3d 97, 98–99 (2020), the defendant was forced to wear some form of restraints at every court appearance, without an individualized inquiry into the need for restraints. The restraints there included handcuffs, leg irons, and waste chains. He was required to wear these restraints at all appearances from the first appearance through a jury trial. Id, at 847. The Court held that the trial court did not follow established law prohibiting the use of blanket jail policies and shackling without an individualized inquiry. Id, at 857. The court further held that the constitutional right to a fair trial is also implicated by shackling and restraints at nonjury pretrial hearings. Id, at 852.

In *Walker v. Butterworth*, 599 F.2d 1074, 1076 (1st Cir. 1979), the defendant had to appear during a jury trial in a

"prisoner's dock" which was described as being about four feet square and four feet high, open at the top so that the defendant's head and shoulders can be seen by the jury. In *State v. Jaime*, 168 Wn. 2d 857, 233 P.3d 554 (2010), defendant was tried in front of a jury in a jailhouse courtroom and convicted. The Court reversed, holding that "the setting of Jaime's trial infringed upon his right to a fair and impartial trial." Id, at 867.

In these cases, the courts have recognized that certain courtroom security measures are inherently prejudicial. *Finch*, at 845-46, (shackling, handcuffing, or other physical restraints; gagging the defendant); *Jaime*, at 864, (holding a trial in a jail). Before allowing an inherently prejudicial security measure, the trial court must make a factual determination that the measure is " 'necessary to prevent injury to those in the courtroom, to prevent disorderly conduct at trial, or to prevent an escape.' " *Finch*, at 846, (quoting *State v. Hartzog*, 96 Wash.2d 383, 398, 635 P.2d 694 (1981)). This determination must be based on specific facts in the record that relate to the particular defendant.

Jaime, at 866. And inherently prejudicial security measures should be allowed only in "extraordinary circumstances." *Finch*, at 842.

In contrast to these cases, Luthi did not appear before a jury being presumed innocent of the charges and under circumstances where that presumption could be eroded by restraint or security measures. Rather, this was a postconviction probation violation hearing. She was not shackled in any way whatsoever. She appeared in a booth in a jail courtroom. Having an in-custody defendant appear in a booth with a mesh screen for court appearances at the jail courtroom is clearly distinguishable from the inherently prejudicial leg irons and other shackling devices used in the above noted cases. In *State v. Williams*, 22 Wash. App. 2d 1023, review denied, 200 Wash. 2d 1014, 519 P.3d 589 (2022), the defendant, relying on *Jackson*, argued that videoconferencing from prison was similarly prohibited. The court found no error, noting, "Nothing in the record indicates that Williams was shackled while appearing on video. We decline to

read *Jackson* for the broad proposition that any videoconference appearance from prison violates the defendant's constitutional rights." The present case is more like *Williams* than *Jackson*.[1]

Luthi contends that appearing in the jail booth violated her rights to counsel and a fair hearing. She asserts that "she is forced to stand throughout a court hearing or to be seated on a stool that makes her unable to view the proceedings." But she was no less able to communicate with her attorney by speaking through a mesh screen than if she stood next to her attorney just outside of the booth. There is no indication whatsoever that Luthi was less able to communicate with her attorney or that her ability to participate was impaired because she stood inside the booth while her attorney stood directly outside it. One of the three attached photographs shows that even if someone chooses to sit in the chair inside the booth they can clearly see into the

[1] *Williams* is an unpublished opinion from 2022. GR 14.1-unpublished opinions of the Court of Appeals filed on or after March 1, 2013, may be cited as non-binding authorities, if identified as such by the citing party, and may be accorded such persuasive value as the court deems appropriate.

courtroom through the window and the mesh screen to the right of the window. Luthi asserts that a corrections officer in the booth with the defendant can "likely read" any documents involved in the proceedings. This is entirely speculative. Luthi's rights to counsel and a fair hearing were not violated.

The decision on whether to shackle a defendant is vested within the discretion of the trial court and is reviewed under the abuse of discretion standard. *State v. Turner*, 143 Wash.2d 715, 724, 23 P.3d 499 (2001) (quoting *State v. Breedlove*, 79 Wash. App. 101, 113, 900 P.2d 586 (1995)). A trial court abuses its discretion when its " 'decision is manifestly unreasonable, or is exercised on untenable grounds, or for untenable reasons.' " *Turner*, 143 Wash.2d at 724, 23 P.3d 499 (quoting *State v. Blackwell*, 120 Wash.2d 822, 830, 845 P.2d 1017 (1993)).

A claim for unconstitutional physical restraint is subject to a harmless error analysis. *Jackson*, at 855-56. If an error violates a defendant's constitutional right, it is presumed to be prejudicial. *Finch*, at 859. But the State may overcome this presumption by

showing that the error was harmless beyond a reasonable doubt. *Jackson*, at 856.

A shackling error "will not be considered harmless unless the State demonstrates that the shackling did not influence the jury's verdict." *State v. Damon,* 144 Wash. 2d 686, 692, 25 P.3d 418, 421, as amended (July 6, 2001), as modified on denial of reh'g, 33 P.3d 735 (Wash. 2001). For example, the Court of Appeals concluded that the use of a shock box to restrain a defendant was not harmless error because the record showed "that the jurors were aware of the shock box and were speculating about it," citing *State v. Flieger,* 91 Wash. App. 236, 242, 955 P.2d 872, 874 (1998). In *Jackson*, the Court held the error was not harmless noting, "it is also purely speculative whether the jury *was unaware* of the leg brace that Jackson expressed *was visible* to the jury from the witness box. This conflicting speculation and the conflicting evidence presented at trial prevent the State from proving beyond a reasonable doubt that the violation was harmless." *Jackson,* at 858. On the other

hand, in *State v. Clark*, 143 Wash. 2d 731, 777, 24 P.3d 1006, 1029 (2001), the Court concluded error in shackling the defendant without an individualized assessment was harmless where the circumstances demonstrated that the jury never saw the shackles. The courts' emphasis in these cases is whether the jury saw that the defendant was restrained. No such concern is present in this case.

Luthi calls the jail booth a "cage." The jail refers to this area as a "booth." Whatever label is ascribed to it, it is not shackles. Luthi's court appearance was not before a jury. Luthi argues that the area was itself a "restraint," and reasons that since shackles are a restraint, the rules that apply to the improper use of shackles must therefore apply here. But the jail itself is a form of "restraint." The court room she appeared in for this short postconviction hearing is located within the jail building. Luthi would have been "restrained" whether she was within the booth or at counsel table a few feet away.

V. CONCLUSION

Given the clear differences between forcing a defendant to appear before a jury wearing shackles without an individualized finding of necessity, and having a defendant appear in a jail booth for a short postconviction probation violation hearing, the court did not abuse its discretion in overruling Luthi's objection. Having her remain in the jail booth was not an inherently prejudicial form of restraint. Error, if any was harmless.

I certify that this document is font size 14 and contains 1896 words, excluding those portions exempt under RAP 18.17.

Respectfully submitted this 26th day of September, 2023.

By:_____

Tom Ladouceur, WSBA #19963
Chief Criminal Deputy Prosecuting Attorney
Representing Respondent

CERTIFICATE OF SERVICE

I, Shanie Searing, do hereby certify that RESPONDENT'S BRIEF was filed electronically through the Supreme Court Portal to:

Gregory Charles Link
Washington Appellate Project
1151 Third Ave., Ste 610
Seattle, WA 98101-1683
greg@washapp.org
wapofficemail@washapp.org

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on September 26, 2023.

Shanie Searing

COWLITZ COUNTY PROSECUTING ATTORNEY'S OFFICE

September 26, 2023 - 3:27 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	101,828-2
Appellate Court Case Title:	State of Washington v. Cassandra Lee Luthi
Superior Court Case Number:	19-1-00063-2

The following documents have been uploaded:

- 1018282_Briefs_20230926152559SC130807_1989.pdf
  This File Contains:
  Briefs - Respondents
  The Original File Name was Respondents Brief.pdf
- 1018282_Motion_20230926152559SC130807_8623.pdf
  This File Contains:
  Motion 1 - Extend Time to File
  The Original File Name was Motion for Extension.pdf

A copy of the uploaded files will be sent to:

- greg@washapp.org
- karim@suzanneelliottlaw.com
- suzanne@washapp.org
- wapofficemai@washapp.org
- wapofficemail@washapp.org

Comments:

Sender Name: Shanie Searing - Email: searings@cowlitzwa.gov
Filing on Behalf of: Thomas A. Ladouceur - Email: tom.ladouceur@cowlitzwa.gov (Alternate Email: appeals@cowlitzwa.gov)

Address:
312 SW 1St Avenue
Kelso, WA, 98626
Phone: (360) 577-3080 EXT 6625

Note: The Filing Id is 20230926152559SC130807