

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHAD CHRISTOPHER RUIMVELD,

Defendant-Appellant.

UNPUBLISHED

July 13, 2001

No. 227793

Baraga Circuit Court

LC No. 99-000684-FH

Before: Sawyer, P.J., and Smolenski and Whitbeck, JJ.

WHITBECK, J. (*concurring in part and dissenting in part*).

I concur in the majority's conclusion on all issues in its opinion, save one. On that issue, I respectfully, and very reluctantly, dissent.

Before discussing the issue on which my colleagues and I disagree, I emphasize that I fully agree with the majority's determination that there is no merit to defendant Chad Ruimveld's argument that he was denied his Sixth Amendment right to a jury comprised of a fair cross-section of the community.¹ Ruimveld's central contention appears to be that the jury who sat in judgment of him lacked an adequate number of Hispanics, African-Americans, "or members of the Melanic Religion" on the jury panel, "despite these classes being notably represented within the community *at the Prison* where this offense occurred."² In other words, Ruimveld evidently argues that the venire must represent the prison population.

This argument is little short of ludicrous. While these groups that Ruimveld identifies may be discrete, and therefore protected from exclusion from jury service when members of the community at-large, Ruimveld has not produced any evidence that these groups exist in Baraga County outside the prison.³ The net effect is that there is no reason to believe that the Baraga Circuit Court systematically excluded these groups from jury service. Viewed from the opposite perspective, I cannot fathom how the Baraga Circuit Court could call members of these groups to serve on a jury in proportion to their representation in the prison population because (1) prisoners

¹ See *People v Williams*, 241 Mich App 519, 525; 616 NW2d 710 (2000).

² Ruimveld brief on appeal (emphasis added).

³ See *Williams*, *supra* at 525 (articulating test for Sixth Amendment violation).

cannot serve on a jury⁴ and (2) the record does not show that the nonincarcerated population living in Baraga County shares the same racial, ethnic, and religious characteristics of the prison population. Accordingly, I agree with the majority's conclusion that Ruimveld has wholly failed to satisfy his burden of demonstrating a prima facie violation of his Sixth Amendment rights.

The issue to which I direct this dissent is, however, of an entirely different order of magnitude. The facts are straight-forward. Ruimveld moved for a change of venue after learning that his trial was to take place in the auxiliary courtroom at the Baraga prison administration building. The trial court denied the motion because MCL 600.1517(1) authorizes the chief judge of a circuit court to "designate 1 or more places in the county or counties in that circuit, in addition to the county seat and places otherwise designated by law, where regular terms of circuit court may be held." Further, the Baraga County Circuit Court has an administrative order implementing this statute. The trial therefore took place in the prison. Though the trial court had granted Ruimveld permission to wear civilian clothes during trial, the trial court denied his motion to be tried without shackles.

The majority and I agree that the trial court abused its discretion in allowing Ruimveld to be tried by a jury while wearing restraints. Indeed, the case law makes this conclusion inescapable. Due process,⁵ at its core, requires fundamental fairness.⁶ Inherent in the American justice system's concept of fairness in the criminal trial process is the presumption of innocence; fairness mandates that a defendant be presumed innocent until proven guilty beyond a reasonable doubt.⁷ When a defendant wears shackles in front of a jury, that presumption of innocence is significantly diminished.⁸ Consequently, over the years, American courts, including the Supreme Court of this state, have concluded that restraints constitute an "extreme" measure and, therefore,

⁴ See MCL 600.1307a(1) (To qualify for jury service, an individual may "[n]ot be under sentence for a felony at the time of jury selection.").

⁵ US Const, Am XIV; Const 1963, art 1, § 17.

⁶ See *People v Lester*, 232 Mich App 262, 276; 591 NW2d 267 (1998).

⁷ See *In re Winship*, 397 US 358, 363; 90 S Ct 1068; 25 L Ed 2d 368 (1970), quoting *Coffin v United States*, 156 US 432, 453; 15 S Ct 394; 39 L Ed 481 (1895) (The presumption of innocence is a "bedrock 'axiomatic and elementary' principle whose 'enforcement lies at the foundation of the administration of our criminal law.'"); see also *People v Fields*, 450 Mich 94, 108, n 19; 538 NW2d 356 (1995), quoting 2 McCormick, Evidence (4th ed), § 342, p 453 ("The 'presumption of innocence,' however, is actually not a presumption at all, but '[a]lthough the phrase is technically inaccurate and perhaps even misleading in the sense that it suggests that there is some inherent probability that the defendant is innocent, it is a basic component of a fair trial.'").

⁸ See *Illinois v Allen*, 397 US 337, 344; 90 S Ct 1057; 25 L Ed 2d 353 (1970) ("Not only is it possible that the sight of shackles and gags might have a significant effect on the jury's feelings about the defendant, but the use of this technique is itself something of an affront to the very dignity and decorum of judicial proceedings that the judge is seeking to uphold.").

should be used only under extreme circumstances.⁹ Those extreme circumstances are limited to the need “to prevent escape, injury to persons in the courtroom or to maintain order.”¹⁰

In this case, however, the trial court failed to articulate *any* such extreme circumstance. The trial court mentioned only factors present at virtually every trial, including the presence of jurors and the public, the fact that the courtroom was relatively less secure than a prison, and that the courtroom was a small space.¹¹ The trial court did not conclude that Ruimveld had made any threat to escape or to hurt anyone with whom he might come into contact in the courtroom. The trial court did not find that the shackles were necessary to prevent Ruimveld from interrupting the proceedings on the basis of first-hand observation or Ruimveld’s past conduct.¹² In fact, when defense counsel indicated that he did not know of any disciplinary history that would merit placing Ruimveld in restraints and the prosecution could not point to any danger Ruimveld’s history might suggest, the trial court asked a prison representative about Ruimveld’s disciplinary record. The prison representative specifically said that she was not aware of his disciplinary history; she recommended leaving him in restraints solely because of prison “policy.”

Despite the clear abuse of discretion in this instance, the prosecution attempts to make light of the circumstances surrounding trial. Writing in the passive voice to avoid any responsibility for its opposition to Ruimveld’s motion to remove the restraints, the prosecution acknowledges that escape, injury, and disruption are the appropriate reasons for allowing a defendant to be tried while in restraints. The prosecution also reiterates the trial court’s flawed reasoning denying the motion, emphasizing Ruimveld’s status as a prisoner, as if he were not entitled to the same presumption of innocence afforded all other defendants. Though questioning whether the trial court erred at all, the prosecution has still failed to posit any factual basis whatsoever to justify the trial court’s decision within this well-defined and limited legal framework for allowing restraints during a jury trial. Consequently, there is no way to rationalize the trial court’s decision on this issue, even on the basis of the prosecution’s arguments.

The point at which the majority and I part company is whether the error was harmless. The majority concludes that this error was harmless by relying on *People v Johnson*.¹³ In *Johnson*, this Court concluded that the trial court erred in allowing the defendant to be tried while in leg restraints because there was no evidence that he posed “an escape risk or a safety risk.”¹⁴ This error was harmless, the *Johnson* panel concluded, because the courtroom’s design prevented the jury from seeing that the defendant was wearing leg restraints and because the trial court indicated that, if necessary, it was prepared to allow the defendant to move to the witness

⁹ See *Holbrook v Flynn*, 475 US 560, 568; 106 S Ct 1340; 89 L Ed 2d 525 (1986), discussing *Allen*, *supra* at 344; *People v Dunn*, 446 Mich 409, 425, n 26; 521 NW2d 255 (1994), quoting *State v Hartzog*, 96 Wash 2d 383, 398; 635 P2d 694 (1981).

¹⁰ *Dunn*, *supra* at 425.

¹¹ See *People v Baskin*, 145 Mich App 526, 545-546; 378 NW2d 535 (1985).

¹² See *People v Dixon*, 217 Mich App 400, 405; 552 NW2d 663 (1996).

¹³ *People v Johnson*, 160 Mich App 490; 408 NW2d 485 (1987).

¹⁴ *Id.* at 493.

stand without restraints in a way that would prevent the jury from learning that he had ever been wearing the leg restraints.¹⁵ Nevertheless, this Court cautioned that “it is the unique circumstances of this case which permit affirmance rather than our approval of shackling of defendants during jury trials.”¹⁶

Those “unique circumstances” in *Johnson*, namely the jurors’ ignorance of the restraints and the trial court’s willingness to facilitate the defendant’s ability to testify if he desired without the jury learning of the restraints, certainly did not manifest themselves in this case. Here, the jury could, and apparently did, see Ruimveld in restraints *during* the trial – the factor that distinguishes this case from *Johnson* and other cases in which this Court has held that the *possibility* that a jury’s brief view of the defendant in restraints in or around a courtroom were not sufficiently prejudicial to warrant a new trial.¹⁷

Of course, as the majority and the prosecution observe, the jury in this case had to know that Ruimveld was an inmate in Baraga prison at the time of the trial. The jury could scarcely be unaware that Ruimveld was a prisoner, given the circumstances of his crime and given that he was being tried in a prison building. However, the majority’s conclusion that the “jury did not place any unfair importance on defendant’s being shackled” flies in the face of simple common sense. I think, to the contrary, that the jury could only conclude that Ruimveld was a violent and dangerous man, a “thug” and an “animal” as his brief on appeal succinctly puts it. In the absence of any factors that justified the trial court’s decision to allow Ruimveld to be shackled, this was the very essence of prejudice. Without uttering a word or making even a single gesture, Ruimveld stood virtually convicted before the jury. As has been noted so frequently:

The presumption of innocence requires the garb of innocence, and regardless of the ultimate outcome, or of the evidence awaiting presentation, every defendant is entitled to be brought before the court with the appearance, dignity, and self-respect of a free and innocent man, except as the necessary safety and decorum of the court may otherwise require.^{18]}

For no good reason other than prison “policy,” Ruimveld went before the plain view of the jury in shackles. Because of his prior offense, Ruimveld was not a free man. However, he was at the outset of his trial presumed innocent of the offense with which he was then charged. The trial court’s ruling stripped him of the “garb of innocence” and clothed him in chains. That ruling was a patent abuse of discretion and, by its very nature, could not have been harmless.

The majority, I reluctantly and respectfully conclude, misses the basic point. MCL 600.1517(1) and the related administrative order of the Baraga Circuit Court converted a portion

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See *People v Wells*, 103 Mich App 455, 459-461; 303 NW2d 226 (1981) and cases discussed therein.

¹⁸ *People v Shaw*, 381 Mich 467, 472-473; 164 NW2d 7 (1969), quoting *Eaddy v People*, 115 Colo 488, 491-492; 174 P2d 717 (1946).

of a prison into a courtroom. These provisions did not convert the courtroom into a prison. In every American courtroom, a criminal defendant has the absolute right to the presumption of innocence. The fact that such a courtroom may, for reasons of administrative convenience, be in prison does not affect the presumption one iota. Requiring Ruimveld to appear before the jury in shackles, without any showing whatsoever of a risk of escape, of injury to others, or of damage to proper trial decorum was prejudicial per se. The trial court's ruling did not, in my view, just diminish the presumption of innocence, it obliterated it.

I would therefore reverse Ruimveld's conviction and remand for a new trial.

/s/ William C. Whitbeck