CASE NOTES

CONSTITUTIONAL LAW—Requiring a Criminal Defendant to Remain Shackled in the Presence of the Jury, Despite Its Prejudicial Effect, Is Constitutionally Permissible in Certain Circumstances—*State v. Wilson*, 406 N.W.2d 442 (Iowa 1987).

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I. FACTS

Ricky Laverne Wilson was convicted of first-degree murder, first-degree robbery, and second-degree theft in April, 1986.[1] Following a jury verdict of guilty, the court sentenced Wilson to life imprisonment for the murder[2] conviction and added concurrent indeterminate twenty-five and five-year terms for the other convictions.[3] Prior to his trial, Wilson escaped from the Woodbury County jail by assaulting a deputy sheriff and forcibly locking other jail employees in a cell.[4] At a pre-trial hearing the day before Wilson's trial began, the state requested security precautions, and after hearing argument by counsel and testimony by a deputy sheriff, the district court judge decided

1. State v. Wilson, 406 N.W.2d 442, 443 (Iowa 1987).
2. The incidents for which Wilson was convicted involved the murder and robbery of Raymond Smith. *Id.* The victim was found in the basement of his home three days after the incident, with 31 stab wounds in his chest inflicted by a paring knife, and a skull fracture inflicted by a tire iron. *Id.* at 444.
3. *Id.* at 443.
4. *Id.* at 449.

that Wilson's ankles should be shackled during the trial.[5]

In an effort to mitigate the prejudice which shackling would create, the trial judge ordered Wilson to be brought into the courtroom before the jury entered and remain at the counsel table until the jury left.[6] The court also gave the jury preliminary instructions regarding the presumption of innocence and the standard of reasonable doubt, immediately following opening statements of counsel.[7] Wilson appealed the verdict claiming, *inter alia*,[8] that he was denied a fair trial because he was required to wear leg shackles during the trial, which caused undue prejudice.[9]

The Iowa Supreme Court held that requiring a criminal defendant to remain shackled in the presence of a jury, despite its inherently prejudicial effect, is constitutionally permissible in certain circumstances. *State v. Wilson*, 406 N.W.2d 442 (Iowa 1987).

II. Categories of Shackling

It should be noted that the issue of shackling a criminal defendant is usually divided into two[10] major categories.[11] One category comprises incidents "in which members of the jury briefly and inadvertently observe the defendant being moved to and from the courtroom area in shackles during a trial recess."[12] The second major category, labeled pure shackling,[13] involves situations in which "the defendant is shackled in the courtroom during trial."[14]

The pure shackling category can be broken down into two sub-categories: the dangerous defendant,[15] and the vociferous defendant.[16]

III. The Constitutional Issue

The premise that a defendant should remain unshackled during his trial has been traced from the Bible through Magna Carta and English legal scholars such as Coke and Blackstone, and ultimately has carried over into

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5. *Id.*
6. *Id.*
7. *Id.*
8. Wilson's additional grounds for appeal involved a denial of a change of venue based on adverse pre-trial media coverage, and wrongful exclusion of evidence regarding the victim's alleged proclivity toward aberrant sexual behavior and pedophilia. *Id.* at 444-48.
9. *Id.* at 448-50.
10. A separate, but similar, category involves shackling a defense witness. United States v. Esquer, 459 F.2d 431, 433 (7th Cir. 1972), *cert. denied*, 414 U.S. 1006 (1973).
11. State v. Wilson, 406 N.W.2d at 448.
12. *Id. Accord* State v. Ellis, 350 N.W.2d 178 (Iowa 1984); State v. Kile, 313 N.W.2d 558 (Iowa 1981).
13. State v. Wilson, 406 N.W.2d at 448.
14. *Id.*
15. *Id.*
16. Illinois v. Allen, 397 U.S. 337 (1970).

American jurisprudence.[17] The principal objection to pure shackling is that it robs the defendant of his indicia of innocence.[18]

This objection is framed on the basic tenet of our Constitution that every criminal defendant is guaranteed a right to a fair and impartial trial;[19] consonant with this right is a presumption of innocence until proven guilty by the state, through the use of substantive evidence, and beyond a reasonable doubt.[20] When the jury is allowed to see a shackled defendant, the jury will "necessarily conceive a prejudice against the accused,"[21] thus causing them to believe that the defendant is dangerous and not capable of being trusted.[22]

Shackling also is undesirable because it diminishes the defendant's ability to manage and control his defense,[23] or it negates the effective assistance of counsel.[24] The use of such restraints will not only "prejudicially affect [the defendant's] statutory privilege of becoming a competent witness,"[25] but it also physically handicaps the defendant by "depriving him of the free and calm use of his faculties."[26] These principles also reflect elements of a fair trial which are guaranteed by the sixth amendment.[27]

A final objection[28] against requiring a defendant to appear in shackles before the court is that it "detracts from the dignity and decorum of the judicial process."[29] This rationale was exemplified in *Illinois v. Allen*[30] when Justice Black said, "the use of this technique [shackling and gagging] is itself something of an affront to the very dignity and decorum of the judicial

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17. Kennedy v. Cardwell, 487 F.2d 101, 105 (6th Cir. 1973), *cert. denied*, 416 U.S. 959 (1974). *See also* Krauskopf, *Physical Restraints of a Defendant in the Courtroom*, 15 ST. LOUIS U.L.J. 351 (1971).

18. United States v. Samuel, 431 F.2d 610 (4th Cir. 1970), *cert. denied*, 401 U.S. 946 (1971).

19. U.S. CONST. amend. VI.

20. United States v. Samuel, 431 F.2d at 614.

21. Kennedy v. Cardwell, 487 F.2d at 106.

22. *Id.*

23. Faretta v. California, 422 U.S. 806 (1975).

24. People v. Harrington, 42 Cal. 165, 168 (1871). *Harrington* is the first American case addressing the issue of shackling a criminal defendant.

25. *Id.* at 168.

26. State v. Kring, 64 Mo. 591, 593 (1877). This is the second American case addressing shackling.

27. The express elements of a fair trial include: a speedy and public trial, an impartial jury, notice of the charge, ability to confront adverse witnesses, ability to call favorable witnesses, and assistance of counsel. U.S. CONST. amend. VI.

28. A fourth objection raised in earlier shackling cases was based on the physical pain the defendant suffered from wearing shackles. State v. Williams, 18 Wash. 47, 50 P. 580 (1897). This objection, however, has been made invalid by the improvements made in current restraining techniques. People v. Mendola, 2 N.Y.2d 270, 159 N.Y.S.2d 473, 140 N.E.2d 353 (1957).

29. Kennedy v. Cardwell, 487 F.2d at 106.

30. Illinois v. Allen, 397 U.S. 337 (1970).

proceedings that the judge is seeking to uphold."[31]

In accordance with these three objections, several jurisdictions have held that pure shackling is inherently prejudicial, and that a criminal defendant should appear at trial free of any bonds except in extraordinary circumstances.[32] This inherent prejudice that pure shackling casts on the defendant shifts the burden to the state to prove that certain conditions exist which require extraordinary security measures to ensure the safety of the jury, the trial judge, the courtroom personnel, and the spectators.[33] Once these extraordinary circumstances are shown to be present, the defendant's rights must "bow to the competing rights of participants in the courtroom and society at large."[34]

The final decision to implement physical restraints upon a criminal defendant rests within the discretion of the trial judge,[35] because the trial judge "is best equipped to decide the extent to which security measures should be adopted."[36] Thus it is within the sound discretion of the trial judge to confute the rule against shackling when it is necessary to prevent escape, to protect others in the courtroom, or to maintain order during trial.[37]

IV. Pure Shackling and the Dangerous Defendant

Once the trial court becomes aware of any possible dangerous propensities of the criminal defendant, the court can require that the defendant be tried in shackles. This discretion, however, is not unlimited, and requires a "meaningful exercise of judicial discretion."[38] In order to make an impartial and equitable decision,[39] the trial judge must acquire "knowledge and understanding of all the matters on which the decision is based."[40]

To assist the trial court, a 1963 Supreme Court[41] decision framed three

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31. *Id.* at 344.

32. Kennedy v. Cardwell, 487 F.2d 101 (6th Cir. 1973); United States v. Samuel, 431 F.2d 610 (4th Cir. 1970); State v. Tolley, 290 N.C. 349, 226 S.E.2d 353 (1976); State v. Wilson, 406 N.W.2d 442 (Iowa 1987).

33. United States v. Samuel, 431 F.2d 610 (4th Cir. 1970).

34. *Id.* at 615.

35. *Id.*

36. *Id.*

37. State v. Tolley, 290 N.C. 349, ____, 226 S.E.2d 353, 367 (1976).

38. State v. Roberts, 86 N.J. Super. 159, 206 A.2d 200 (1965).

39. A good definition of judicial discretion can be found in Langnes v. Green, 282 U.S. 531, 541 (1931) ("The term 'discretion' denotes the absence of a hard and fast rule. . . . When invoked as a guide to judicial action, it means a sound discretion, that is to say, a discretion exercised not arbitrarily or willfully, but with regard to what is right and equitable under the circumstances and the law, and directed by the reason and conscience of the judge to a just result.").

40. Woodwards v. Cardwell, 430 F.2d 978, 982 (6th Cir. 1970), *cert. denied*, 401 U.S. 911 (1971).

41. Townsend v. Sain, 372 U.S. 293 (1963).

general inquiries which this fact-finding mission should encompass: the record of the defendant, the layout of the courtroom and the courthouse, and the physical condition of the defendant.[42] Unless the trial judge balances these three conditions, weighing all the "material circumstances," the decision to shackle a criminal defendant may be overturned on appeal.[43]

These material circumstances were best defined by the Supreme Court of North Carolina in *State v. Tolley*,[44] as:

> [T]he seriousness of the present charge against the defendant; the 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; risk of mob violence or attempted revenge by others; . . . the size and mood of the audience; the nature and physical security of the courtroom; and the adequacy and availability of alternative remedies.[45]

The judicial inquiry is not limited to the defendant's conduct at the time of trial,[46] and may encompass sources other than "evidence formally offered and admitted at the trial."[47] For example, the court may take into consideration a request for additional security from the sheriff's office, as well as expert testimony offered by the defendant proving a physical disability that negates the ability of the defendant to escape.[48]

To further protect the defendant's "indicia of innocence,"[49] the court must conduct, at the minimum, an informal hearing on the issue of shackling, outside the presence of the jury, and allow counsel the opportunity to argue.[50] Once the trial court has made an affirmative decision to require the defendant to be shackled during the trial, the trial judge should offer a preliminary jury instruction "in the clearest and most emphatic terms"[51] that the use of these restraints should in no way taint the jury's deliberations when deciding the issue of guilt.[52] Use of these established procedures will provide a reviewing court with a "meaningful record" for determining the issue of judicial error.[53] Once it becomes evident from the trial record that the court has followed this procedure, the defendant has the burden of proof

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42. *Id.*
43. State v. Tolley, 290 N.C. at ____, 226 S.E.2d at 368.
44. *Id.*
45. *Id.*
46. Kennedy v. Cardwell, 487 F.2d at 111, *cert. denied*, Kennedy v. Gray, 416 U.S. 959 (1974).
47. State v. Tolley, 290 N.C. at ____, 226 S.E.2d at 368, citing with approval State v. Roberts, 86 N.J. Super. 159, 206 A.2d 200 (1965).
48. Kennedy v. Cardwell, 487 F.2d at 11.
49. United States v. Samuel, 431 F.2d 610, 615 (4th Cir. 1970).
50. State v. Tolley, 290 N.C. at ____, 226 S.E.2d at 368.
51. *Id.*
52. *Id.*
53. *Id.*

at a subsequent "habeas corpus proceeding to establish that his constitutional rights were violated . . . ."[54]

V. Iowa's Approval of This Procedure

In beginning its review of the shackling issue, the court in *Wilson* recognized the constitutional right of the defendant to be presumed innocent until proven guilty.[55] The court also acknowledged that requiring a criminal defendant to be tried in shackles "gives rise to an unmistakable brand of guilt or creates an unacceptable risk the jury may consciously or subconsciously be influenced in their deliberations,"[56] and thus is inherently prejudicial.[57] This declaration overruled an earlier Iowa Supreme Court decision[58] which stated, "this court cannot presume that the defendant was prejudiced because he was handcuffed [to an officer during trial]."[59]

The court then turned to an examination of the trial court record. The record established that the state's request for security precautions was addressed at a pre-trial hearing, at which time the judge heard testimony from a deputy sheriff and argument of counsel.[60] In making his decision, the trial judge stated for the record that shackling Wilson was necessary "in view of the past history of the defendant . . . and to preclude any possibility that he might make a renewed effort [to escape]."[61]

The Iowa Supreme Court found Wilson's previous escape attempt persuasive enough to require additional security.[62] The court, however, also found other factors, such as the seriousness of the murder charge,[63] Wilson's age, and the possible friction which might arise from the presence of the media,[64] and a large audience,[65] relevant to the trial court's affirmative decision to mandate the use of pure shackling.[66]

The Iowa Supreme Court not only approved of the trial court's inquiry into the "material circumstances in the case,"[67] but also commended the trial judge for his "care in minimizing the prejudice to [Wilson]."[68] This care

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54. Kennedy v. Cardwell, 487 F.2d at 111.
55. State v. Wilson, 406 N.W.2d at 448.
56. *Id.* at 449 (citing Holbrook v. Flynn, 475 U.S. 560, 571 (1986)).
57. State v. Wilson, 406 N.W.2d at 449.
58. State v. Brewer, 218 Iowa 1287, 254 N.W. 834 (1934), *rev'd*, State v. Wilson, 406 N.W.2d 442 (Iowa 1987).
59. *Id.* at 1299, 254 N.W. at 840.
60. State v. Wilson, 406 N.W.2d at 449.
61. *Id.*
62. *Id.*
63. *See supra* note 2.
64. *See supra* note 8.
65. State v. Wilson, 406 N.W.2d at 449.
66. *Id.*
67. *See supra* note 2.
68. State v. Wilson, 406 N.W.2d at 449.

was evidenced by the fact that only Wilson's ankles were shackled, that he was brought into and removed from the courtroom out of the presence of the jury, and that preliminary jury instructions were used to dissuade the jury from forming any pre-conceived prejudice caused by the shackles.[69]

In finding no abuse of judicial discretion by the trial judge, the court recommended that all courts facing a similar situation follow these same procedures,[70] and that employment of "the least prejudicial and least conspicuous security measures possible under the circumstances,"[71] as was done by the trial court,[72] is preferred.[73] In concluding, the court stated that only by following the above-described procedures can a trial court equitably balance the "defendant's right to a fair trial against the competing interests of participants in the courtroom and society at large in preserving a safe and orderly trial."[74]

VI. Conclusion

It is apparent that whenever the interests of two or more diverse parties clash, one party inevitably must bow to the other. From its infancy, the American system of jurisprudence recognized that no individual right can be absolute, and that under certain circumstances a compromise may become necessary. When these circumstances are present, the courts not only provide equitable methods for balancing the interests of the parties, but also measures to reconcile any undue prejudice inhering to the bowing party. This balancing process, however, becomes more tenuous when one party is a criminal defendant.

The elements of the accused's rights were ratified by the Framers of the Constitution to protect the accused from being subjected to a "star chamber-type" proceeding;[75] therefore, the sixth amendment only entitles the criminal defendant "to a fair trial . . . not a perfect one."[76]

When the accused, by his own actions—*i.e.*, escape attempts, threats directed at courtroom personnel, disregard for the solemnity of his trial—jeopardizes the possibility of a fair trial or the safety of persons in the courtroom, the court is justified in taking appropriate security measures. Preclusion of the ability to adequately protect civilians from a potentially dangerous defendant could have a more disastrous effect on a fair trial by inhibiting prospective jurors from participation in the trial process. The procedures followed by the district court in *Wilson*, and approved by the

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69. *Id.*
70. *Id.*
71. *Id.* at 450.
72. *Id.*
73. *Id.*
74. *Id.*
75. *See* In re Oliver, 333 U.S. 257, 269 n.22 (1948).
76. Lutwak v. United States, 344 U.S. 604, 610 (1953).

United States Supreme Court as well as the Iowa Supreme Court, provide the best compromise available. When followed, these procedures provide the court with appropriate safety valves, but also respect the rights of the accused to remain innocent in the eyes of the jury.

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