

No. 01-24-00418-CR

**IN THE COURT OF APPEALS
FOR THE FIRST DISTRICT OF TEXAS**

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DARIUS CASTILLE

Appellant

DEBORAH M. YOUNG
Clerk of The Court

v.

THE STATE OF TEXAS

Appellee

On Appeal from Cause Number 1730955
From the 180th District Court of Harris County, Texas

BRIEF FOR APPELLANT

ORAL ARGUMENT WAIVED

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STATEMENT OF THE CASE

Mr. Castille was charged with capital murder on October 8, 2021. (C.R. at 59). On April 8, 2024, he entered a plea of not guilty and proceeded to trial by jury. (2 R.R. at 227). On April 10, 2024, the jury found Mr. Castille guilty of the lesser offense of murder. (4 R.R. at 58; C.R. at 388). Mr. Castille received a sentence by the trial court of forty-five (45) years in the Institutional Division of the Texas Department of Criminal Justice. (6 R.R. at 4; C.R. at 388). Mr. Castille filed timely notice of appeal and the Harris County Public Defender's Office was appointed to represent him. (C.R. at 393). Undersigned counsel was assigned to this case on

ISSUE PRESENTED

ISSUE ONE

WERE MR. CASTILLE'S FIFTH AND FOURTEENTH AMENDMENT RIGHTS VIOLATED BY THE TRIAL COURT SHACKLING HIM DURING TRIAL?

STATEMENT OF FACTS

On October 8, 2021, Appellant was indicted for the offense of capital murder. According to the indictment:

in Harris County, Texas, DARIUS CASTILLE, hereafter styled the Defendant, heretofore on or about July 11, 2021, did then and there unlawfully, while in the course of committing and attempting to commit robbery of Marcesa Lewis, intentionally caused the death of Marcesa Lewis by shooting with a deadly weapon, namely a firearm.

(C.R. at 59). On April 8, 2024, he entered a plea of not guilty to that charge. (2 R.R. at 227; C.R. at 388).

Captain Chris Carr, with the Houston fire Department, was called to the scene of a possible shooting on July 11, 2021. In response to the call, an engine, a medic unit, and an SUV responded. Because of his status as a Captain, Carr rode in the SUV. They arrived at the scene before the Houston Police Department. Their role was exclusively to provide medical care. At first, they believed Appellant was the only patient at the scene, but they eventually realized there was another individual who had been shot as well. Appellant was being taken to the hospital by the medic unit when they realized there was an individual in another car who appeared to have been shot. It was difficult to get to him because the car doors were locked and the windows rolled up. They broke a window and pulled him out of the vehicle. He had a pulse and was breathing. An ambulance was called and he too was transported to hospital. When they arrived at the hospital, the man was pronounced deceased. (2 R.R. at 240-254; State's Exhibits 1-6).

Officer Brandi Smith, with the Houston Police Department, was working patrol during the early morning hours of July 11, 2021, when she was called to the scene of a shooting. The scene was a gas station. The Houston Fire Department was already there providing medical care. A sergeant and three other officers arrived at the scene around the same time she did. She secured the scene and attempted to identify possible witnesses. There was an unsecured Glock 23 semiautomatic firearm on the ground so she photographed the location and retrieved it so no one would pick it up. Another

firearm, two different types of casings, and blood spatter was found at the scene. (2 R.R. at 261-277; State's Exhibits 7-23, 27-30). They would also retrieve surveillance footage from the gas station. (2 R.R. at 285, State's Exhibit 49). When homicide investigators arrived at the scene, she explained what evidence had been gathered so far. This concluded her role in the case. She did not determine anything about how or why the shooting occurred. (2 R.R. at 291-294).

Detective Kris Persad, with the Houston Police Department, was called to the scene of a shooting at a gas station on July 11, 2021. Along with his partner, he was able to locate fired cartridge casings and possible blood samples. He would testify about the importance of positioning evidence and its impact on understanding the crime scene. He explained that "[their] job is to ...bring some light to the scene on what [they're] seeing on the crime scene." (3 R.R. at 5-10). Detective Persad recounted how each piece of evidence was processed and matched with specific locations. (3 R.R. at 17; State's Exhibit 42). He testified that jewelry and other personal items like a Rolex watch were recovered from the complainant. (3 R.R. at 50-51). Detective Persad admits that the investigation primarily relied on video footage and there was no attempt to collect DNA or fingerprint evidence. (3 R.R. at 53-58).

Dr. Hannah Jarvis, a forensic pathologist with the Harris County Institute of Forensic Sciences, described injuries sustained by the complainant including a tangential wound that scraped the skin and entrance and exit wounds. She explained how

evidence of gunpowder stripping is used to determine the distance of the firearm at the time of the shooting. (3 R.R. at 84, 101-104).

Ms. Demetrice Lewis, the wife of the complainant, identified her now deceased husband in a photo. (3 R.R. at 116-117; State's Exhibit 94).

Darius Tyrese Castille, a 24-year-old man raised in Beaumont, Texas, would testify about the events of July 11, 2021. The evening started with a casual hangout at a club with friends until he went outside to purchase some pills from someone he only knew as Mr. Lewis. After engaging with Mr. Lewis he and three of his friends left the club to go to the store. He would soon realize that the pills he purchased were fake. This upset him a lot. As they were about to leave the parking lot, he saw a car he recognized from the club and asked his friend who was driving to pull up next to the car and realized it was the man he knew as Mr. Lewis. He was mad about the pills and wanted to beat him up. With a gun in his hand, he approached the man and hit him with the gun. To his surprise, the man pulled out a gun and shot him so he fired back. (3 R.R. at 120-137).

SUMMARY OF THE ARGUMENT

Despite the fact that he is paralyzed and wheelchair bound, for no reason whatsoever, Mr. Castille was shackled during his trial. The jury saw the shackles. The trial court made no findings as to why Mr. Castille was shackled – he merely accepted the explanation of the bailiff, ignored Mr. Castille’s fundamental right to the presumption of innocence, and moved on. As a result of this blatant Constitutional violation, Mr. Castille was denied his right to a fair trial.

ARGUMENT

ISSUE ONE

WERE MR. CASTILLE’S FIFTH AND FOURTEENTH AMENDMENT RIGHTS VIOLATED BY THE TRIAL COURT SHACKLING HIM DURING TRIAL?

A. Shackling a defendant absent an express finding of an essential state interest is unconstitutional.

“The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law.” *Coffin v. United States*, 156 U.S. 432, 453 (1895). During both the guilt and punishment phase of the trial “the Constitution forbids the use of visible shackles ...unless that use is “justified by an essential state interest—such as the interest in courtroom security—specific to the defendant on trial.” *Deck v. Missouri*, 544 U.S. 622, 624 (2005). “The law has long forbidden routine use of visible shackles during the guilt phase; it permits a State to shackle a criminal defendant only in the presence of a special need.” *Id.* at 626.

In *Deck*, the Supreme Court recognized that the prohibition against shackling dated back to “Blackstone’s ‘ancient’ English rule,” and that the prohibition was widely followed in all American jurisdictions, including Texas. *Id.* at 626-627 (*citing Rainey v. State*, 20 Tex. App. 455, 472-473, 1886 WL 4636 (1886)(opinion of White, P.J.)). The Court discussed that early courts agreed on one thing “virtually without exception on a basic rule embodying notions of fundamental fairness; Trial courts may not shackle defendants routinely, but only if there is a particular reason to do so.” *Id.*

Finally, the Court made clear the trial court has a duty to justify its choice of shackling a defendant:

Thus, the Fifth and Fourteenth Amendments prohibit the use of physical restraints visible to the jury absent a trial court determination, in the exercise of its discretion, that they are justified by a state interest specific to a particular trial. Such a determination may of course take into account the factors that courts have traditionally relied on in gauging potential security problems and the risk of escape at trial.

Id. at 629.

Texas, of course, follows the Court’s decision in *Deck* and has discussed the proper application of the law in *Bell v. State*, 415 S.W.3d 278 (Tex. Crim. App. 2013).

That Court also recognizes the trial judge’s duty to justify shackling on the record:

More recently, we reaffirmed these principles and concluded that while courts permit shackling, it is only justified when, in the trial judge’s discretion, it is necessary for a particular defendant in a particular proceeding. To this end, the record must manifest the trial judge’s reason for restraining the defendant. When the record fails to detail the grounds for restraint, a trial judge errs in ordering a defendant shackled.

Id. at 281.

In *Bell*, it was not clear whether or not the jury was aware of the defendant's shackles, and the court had provided us with a test to decide when the constitutional harm standard should apply. The Court held "shackling error may rise to the level of constitutional error when the record reflects a reasonable probability that the jury was aware of the defendant's shackles. We do not intend to suggest that reasonable probability in this context means more probable than not; it simply requires a substantial basis supporting a conclusion that the jury perceived the defendant's restraints." *Id.*

B. The shackling of Mr. Castille was unconstitutional

In this case, despite the fact that Appellant was in a wheelchair, the Harris County Sheriff's Office was permitted to place Appellant in visible shackles during trial. The trial court assumed no responsibility for protecting Appellant's right to the presumption of innocence and therefor failed to protect this fundamental Constitutional right.

Appellant objected to being shackled just prior to the beginning of trial:

Mr. Moncriste: Judge, we would like the defendant, Mr. Castille, unshackled. They have him shackled here at the table and we would object to that.

The Court: What is the policy?

The Bailiff: The policy, he's not shackled to the table. He's just shackled with his legs –

The Court: That's fine.

The Bailiff: Yes, sir.

Mr. Moncriste: He's paralyzed, Judge.

The Court: Say that again.

Mr. Moncriste: He's paralyzed. We think he should not be shackled.

The Court: So, just FYI. I usually don't get into the business of the Harris County Sheriff's security matters. If you guys would have brought it up sooner, maybe we could have discussed it. You can a supervisor who can come down here or something?

The Bailiff: I can have one come up.

The Court: I'm not going to get into their business like that. Anything else for the record?

Mr. Moncriste: Just for the record, we object to it, Judge. That's all.

(2 R.R. at 5-6).

To add insult to injury, prior to his testimony, trial counsel reiterated the problem:

Mr. Keirnan: Where will you put him, Judge? How do you feel about –

The Court: Your preference, however you would like to do it.

Mr. Keirnan: I don't know if we can get him on the witness stand.

The Court: That's why I say your preference, however you would like to do it.

Mr. Keirnan: What about right here, in front of you?

The Court: Whatever you guys want to do, that's what we'll do.

The Bailiff: We can put him up here.

The Court: That's fine.

Mr. Keirnan: Wait a minute Judge. I'm asking you –

The Court: Yes, sir.

Mr. Keirnan: --- where do you ---

The Court: Yeah, I'm going to give you this same answer I gave you the other day. I'm not going to interfere with the sheriff's security policy. So it's going to be the same answer you got the other day.

Mr. Keirnan: I understand, We have the same objection, Judge –

The Court: Fair enough.

Mr. Keirnan: --about to testify that he be able to do so freely. The record will reflect that he's in a wheelchair and he's paralyzed and he can't move. There's no reason to have him in shackles.

The Court: Thank you for making a record. It's denied.

(3 R.R. at 118-119).

In *Gennusa v. State*, No. 01-22-00519-CR, 2023 WL5436395 (Tex. App. –Houston [1st Dist.] Aug. 24, 2023, pet. ref'd), Gennusa was shackled during the voir dire proceedings. Defense counsel realized he was in shackles and told the trial court, “Judge, I was not aware that my client was shackled. So I told him to move seats, and it was only once he moved that I realized he was shackled. I’m not sure why, and I’m sure that that front row saw.” On the first day of the guilt-innocence phase of the trial, before the jury was seated, defense counsel re-urged her objection to Gennusa being shackled. The trial court asked the bailiffs why he was shackled to which the bailiffs reiterated that it was the Harris County Sheriff’s Office “policy.” The trial court accepted that reason and refused to order the removal of Gennusa’s shackles.

Ultimately, this Court recognized that the trial court permitted Gennusa to be shackled at trial without making a determination that the shackles were justified by an adequate state interest specifically noting that the only reason given by the trial court for shackling Gennusa was the Sheriff's Office policy. Having determined that this policy and routine practice was an inadequate justification for shackling during trial, this Court held that the trial court abused its discretion. However, this Court ruled that because none of the jurors perceived the shackles at trial, the trial court's unjustified shackling of Gennusa was non-constitutional error, in violation of the common law.

The "routine shackling" of criminal defendants at trial, without adequate justification and a particularized finding by the trial court is strictly prohibited. Here, as in *Gennusa*, Appellant was shackled due to the routine practice of the Sheriff's Office without any other justification or particularized finding by the trial court. The fact that Appellant was in wheelchair, without question, makes the decision to shackle him absolutely absurd.

C. Conclusion

Again, the Due Process Clause of the Fourteenth Amendment to the United States Constitution strictly prohibits the use of physical restraints on a criminal defendant that are visible to the jury at trial. *Deck*, 544 U.S. at 629. Although there is an exception if the physical restraints are justified by an essential state interest that is specific to the particular trial, that is undoubtedly not the case when the defendant is paralyzed and wheelchair bound. Because this record is silent as to the trial judge's

reasons for restraining this paralyzed man, the trial court constitutionally erred, and the State bears the burden on appeal of proving beyond a reasonable doubt that the shackling error did not contribute to the jury's verdict. *See* Tex. R. App. P. 44.2(a).

Appellant prays this court will reverse his conviction and remand to the trial court for a new trial.

PRAYER

Mr. Castille asks this Court to reverse and remand to the trial court for a new trial or for any other relief he may be entitled.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to proposed Rule 9.4(i)(3), undersigned counsel certifies that this brief complies with the type-volume limitations of *Tex. R. App. Proc. 9.4(e)(i)*.

1. Including the portions exempted by *Tex. R. App. Proc. 9.4 (i)(1)*, this brief contains 3,155 words printed in a proportionally spaced typeface.
2. This brief is printed in a proportionally spaced, serif typeface using Garamond 14 point font in text and Garamond 12 point font in footnotes produced by Microsoft Word Software.
3. Undersigned counsel understands that a material misrepresentation in completing this certificate, or circumvention of the type-volume limits in *Tex. R. App. Proc. 9.4(j)*, may result in the Court's striking this brief and imposing sanctions against the person who signed it.

/s/ Dancie Schindler
DAUCIE SCHINDLER

CERTIFICATE OF SERVICE

I certify that on the 4th day of December, 2024, a copy of the foregoing instrument has been electronically served upon the Appellate Division of the Harris County District Attorney's Office.

/s/ *Daucie Schindler*
DAUCIE SCHINDLER

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