

LAW REVIEW

Published in the Sierra Sun
August 7, 2009

By: Jim Porter

IS SHACKLING OF A DEFENDANT DURING TRIAL PREJUDICIAL TO JURY?

In a criminal trial is it appropriate to shackle a defendant or does that have a prejudicial effect on the jury? How about placing a uniformed and armed officer right behind the defendant during his trial? Those questions were answered in two recent Court of Appeal decisions.

Prison Fight

Department of Corrections Sergeant Jordan saw defendant Thomas Miller beating up another inmate in the prison yard at Salinas Valley State Prison. The observation officer ordered a “put down” and all inmates in the yard assumed a prone position. (That means they lay on the ground—I think on their stomachs, but I can never remember if prone means stomach or back.)

Miller kept punching and stabbing the victim 26 times. And he lived. Of course Miller claimed he didn’t do it. “That video image of me isn’t me.” I.e., the usual defense. Miller was convicted but appealed on several grounds, including that he was shackled in the presence of the jury, which prejudiced the jury against him.

Shackles

Here’s the law on use of physical restraints at criminal trials: a defendant cannot be subjected to physical restraints of any kind in the court room while in

the jury's presence unless there is a showing of a manifest need for such constraints.

No more restraint than is necessary may be used. "Manifest need" arises only upon a showing of unruliness, an announced intention to escape, or evidence of any nonconforming or planned conduct, which would obstruct the judicial process if unrestrained. Being a prison inmate alone does not justify use of physical restraints. Even a "lifer" stabbing an inmate 26 times?

If the trial judge determines the use of shackles is appropriate, the jury must be instructed to disregard the shackles and "not speculate about the restraints being used...disregard that matter entirely." We have all seen it on *Law and Order, Special Victims Unit*. A great program by the way.

Retrial

The Court of Appeal reversed the conviction denouncing unnecessary shackling as an "affront to human dignity." (Tell that to the stabbed inmate). Physical restraints may only be used as a last resort, and other than the heinous nature of Miller's crime itself, there is no showing of a manifest need for shackles. Wouldn't the jury have convicted Miller with or without the shackles? I guess we'll find out.

People v. Hernandez

In an unrelated case, another Court of Appeal recently overturned a conviction (which is statistically rare) of a charged defendant, who had beat up his drunk girlfriend (she had just finished a forty-ounce beer, a sixteen-ounce beer and a half-pint of vodka—yet claimed she was merely "catching a small

buzz”), because the trial court allowed a uniformed officer to stand right behind the defendant during the trial.

The trial court and the prosecutor argued that an armed guard stood behind defendants in all trials in that particular courtroom and that society has become used to the presence of armed guards in public places so they are taken for granted and not prejudicial to the jury.

Courtroom Security

The Court of Appeal ruled, however, that courtroom security measures should be reviewed on a case-by-case basis and any kind of restraints should be used only as a last resort.

The Court of Appeal ultimately opined that a trial judge may not adopt an *automatic* policy allowing an officer to stand behind criminal defendants. There must be some showing that the defendant posed a danger to courtroom security.

I agree with the dissenting justice, there is nothing inherently prejudicial about stationing a bailiff near the criminal defendant. It is a matter of maintaining courtroom security.

Jim Porter is an attorney with Porter Simon, with offices in Truckee, South Lake Tahoe, Incline Village and Reno and a licensed California Real Estate Broker. He was the Governor's appointee to the Bipartisan McPherson Commission on political ethics and the California Fair Political Practices Commission. He may be reached at porter@portersimon.com or at the firm's web site www.portersimon.com.