Tulsa Law Review

Volume 1 | Issue 1

1964

Criminal Law: Restraint of the Accused during Trial

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CRIMINAL LAW: RESTRAINT OF THE ACCUSED DURING TRIAL

It is often necessary for a criminal defendant to be restrained in some manner during trial. The main danger created by restraining the defendant by such means as shackles, chains, or armed guards is that prejudice might be formed in the minds of the jurors upon viewing the accused before them. They might infer that the defendant, guilty or not of this charge, is obviously bad or he would not be so restrained. The jury might ask, "Why should we believe the defense of this man who is not even trusted by the judge and sheriff?" By his appearance, the defendant may possibly be a silent witness against himself.

The spirit of the law is that even though a person is accused of a heinous crime, as long as his intent is to properly defend the charges against him, he will be allowed to do so unrestrained. Blackstone stated:

> " . . . [A]nd it is laid down in our ancient books that, though under an indictment of the highest nature, he must be brought to the bar without irons or any manner of shackles or bonds, unless there be evident danger of an escape, and then he may be secured with irons."[1]

Modern practice has been to allow restraint of the accused in more instances than the "evident danger of an escape" noted by Blackstone.[2] It was ruled in *Way v. United States*[3] that a defendant could be restrained to prevent his escape, prevent him from injuring others, or to maintain a quiet and peaceable trial.

Restraint of the defendant is a matter within the discretion of the trial court in most jurisdictions. Reversible error will result only when the trial court *clearly abused* its discretion, or when the defendant was *actually prejudiced* before the jury.[4]

The Oklahoma Court of Criminal Appeals first considered the problem of restraint in *DeWolf v. State*.[5] The defendant was held to have been properly shackled during his entire trial for the murder of a policeman. The appellate court remarked that the extent of restraint during trial is to be goverened by: (1) The character of the accused. (2) His disposition toward being a violent and dangerous person. (3) His record for escapes and possibilities of attempts to release him from custody. (4) The possibility his misconduct could obstruct the work of the court. The court gave support to the view that armed guards, where feasible, should be resorted to instead of handcuffs and shackles.

In its next session after the *DeWolf* decision, the Oklahoma legislature added a clause to the then existing statute on restraint.

[1] 4 BLACKSTONE, COMMENTARIES *322.
[2] *Ibid.*
[3] 285 F.2d 253 (10th Cir. 1960).
[4] State v. Brooks, 352 P.2d 611, 613 (Hawaii 1960).
[5] 95 Okla.Cr. 287, 245 P.2d 107 (1952).

The statute previously read: ". . . [N]or can a person charged with a public offense be subjected before conviction to any more restraint than is necessary for his detention to answer the charge."[6] The following clause was added: ". . . and in no event shall he be tried before a jury while in chains and shackles."[7]

The Oklahoma Court of Criminal Appeals, through Judge Nix, gave bristling support to the new statute in its first court test, *French v. State*,[8] in which a murder conviction was reversed. The accused had appeared before the jury handcuffed, his arms shackled to a six-inch leather belt around his body, and with three armed guards accompanying him. Judge Nix colorfully condemned the restraint of the defendant by stating:

> "Though biologically speaking, man may be an animal, it was never intended that he be treated as such in the realm of criminal jurisprudence. If we permitted the subjection of man to such treatment before the courts of our land, we have paved the way for him to be tried while tied to a log or in a steel cage, as well as chains and shackles. Barbarism has been abandoned and must never be permitted to creep back through the crevices created by lenient rules of law."[9]

The *French* case holds that the "modern reasoning" which motivated the amended statute is essentially: (1) One charged with a crime is entitled to appear in court with free use of his mental and physical facilities. (2) The inherent right, that every defendant is presumed innocent until proven guilty, would be violated if an accused is shackled or chained. That this is only one view is indicated by *State v. Hashimoto*[10] which placed more reliance on the judgment of jurors who witness a handcuffed defendant than the Oklahoma legislature presumably did when it changed the statute. The court remarked that:

> "It is reasonable to assume that a jury panel, particularly when found acceptable to the parties, as it was the case here, is composed of men and women of average intelligence and circumspection as to their sworn duty as jurors to examine, in consonance with the court's instructions on the governing law, the evidence presented and render a fair, unbiased and impartial verdict. It is a farfetched conjecture that jurors under oath would spontaneously harbor prejudice immediately upon seeing a defendant brought to court in manacles."[11]

Because chains and shackles cannot be used by the Oklahoma

[6] 22 OKLA. STAT. § 15 (1951).
[7] 22 OKLA. STAT. § 15 (1961).
[8] 377 P.2d 501 (Okla.Cr. 1962).
[9] *Id.* at 504.
[10] 377 P.2d 728 (Hawaii 1962).
[11] *Id.* at 734.

courts, the only practical method left to restrain the defendant is by the use of guards. The close proximity of such guards could also prejudice a defendant before the jury. The Missouri Supreme Court considered this type of restraint in *State v. Johnstone.*[12] The defendant, charged with first degree robbery, made statements that he intended to create a disturbance during the trial. It was ruled proper to have two deputies not in uniform who had concealed weapons as a reasonable precaution for maintenance of order and retention of custody of the defendant. These deputies were stationed a considerable distance from the counsel table and appeared to be a part of the courtroom officials. This procedure lessened the opportunity for prejudice to form in the minds of the jurors.

Since 1871,[13] ninety-five appellate opinions have considered the problem of restraint. Only nine of these cases were reversed on appeal.[14] No federal appellate court has reversed any lower court's decision, and the United States Supreme Court has not yet written any decision concerning courtroom restraint.

An appellate court should be informed *why* the trial court allowed the restraint of the accused. Such reasons do not usually appear in the record because judges have seldom explained their rulings to the jury. A hearing should be granted to afford the defendant an opportunity to rebut any allegations of necessity for restraint. This should be done out of the presence of the jury so as to not further prejudice the accused. The most desirable method is to hold a hearing prior to the trial by jury. The only case in which this practice is reported to have been followed is *People v. Bryant.*[15] Bryant was a jail escapist who was confronted with several felony charges. Upon request of the district attorney, the trial court conducted a hearing in the nature of a trial without a jury to determine if the restraint was necessary. The witnesses were cross-examined by the defense which was given an opportunity to introduce evidence. It was concluded that the proof submitted and testimony given clearly indicated that there were imperative reasons for the handcuffing. The appellate court commented that it is of paramount importance that the trial court state its reasons for its action in allowing such restraint.

[12] 335 S.W.2d 199 (Mo.), *cert. denied* 364 U.S. 842, 81 Sup.Ct. 81, 5 L.Ed.2d 66 (1960).

[13] The first appellate court case in this country involving restraint was People v. Harrington, 42 Cal. 165 (1871) in which the defendants were tried in irons without evident necessity for the crime of robbery.

[14] Each of the nine cases that has been reversed on appeal is briefly summarized here with the exception of the *Harrington* case found in note 13. Defendant was convicted of simple robbery and was brought into court handcuffed when it was not necessary. Montoya v. People, 345 P.2d 1062 (Colo. 1959). It was improper to have brought accused charged with breaking and entering with intent to commit a misdemeanor into court clothed as a convict and in chains in the presence of the jury when he had not been previously convicted of a crime. Shultz v. State, 179 So. 764 (Fla. 1938).

The procedure followed in the *Bryant* case could be adopted in any jurisdiction without the necessity of statutory change. All that is necessary is that counsel for either the defense or the prosecution request the hearing, and that the trial court grant such a hearing in exercising its sound judicial discretion. The courts should not be hesitant in granting such a hearing unless it is obviously a delaying tactic. Of course, there is no need for such a hearing in Oklahoma unless it is attempted to unduly restrain the defendant by other means than chains or shackles.

The appellate courts frequently resort to the practice of holding that they will not infer prejudice in restraint cases unless the prejudice is sustained by circumstances in the record. This presents the defendant with a seemingly insurmountable hurdle because he has no way of actually proving that the jurors formed prejudices. Counsel cannot dissect the mind of a juror and include its contents in his appeal brief. Usually, the only apparent course open to him is to object to the restraint, and hope for a sympathetic hearing on appeal. This seldom happens. Although the hearing would demonstrate abuse of discretion, it lends nothing to a determination of the effect of restraint on the jury. It is submitted that the "effect on the jury" test is unrealistic, unworkable, and should be abandoned. The state of mind of each juror cannot possibly be perceived through the mere printed word of the transcript or appeal brief.

Without a hearing, it is possible that the most harmless

Defendant's rape conviction was improper because two of his witnesses, who had been brought from the state prison, were manacled during trial. State v. Coursolle, 97 N.W.2d 472 (Minn. 1959). The Missouri Supreme Court first announced the rule that there must be some reason based on the conduct of the prisoner at the time of the trial to authorize his hands to be chained in irons. Although the defendant had assaulted a person in the same courtroom three months previously, his conviction of first degree murder was reversed because of undue restraint. State v. Kring, 64 Mo. 591 (1877), *rev'd* 107 U.S. 221, 2 Sup.Ct. 443, 27 L.Ed. 506 (1883) only in reference to an ex post facto law. The rule announced in the *Kring* case was applied, and a reversal was granted because the court permitted the sheriff to keep defendants shackled during the empaneling of the jury. State v. Rice, 149 S.W.2d 347 (Mo. 1941). Defendant, charged with the crime of murder, was improperly brought before the jury on two instances handcuffed with his arms shackled to a six-inch leather belt around his body, and escorted by three armed guards. See note 5 *supra*. Several errors were ruled on for reversal in State v. Smith, 8 Pac. 343 (Ore. 1883), one of which was that defendant was tried with irons on his feet. He had killed a penitentiary officer. The court noted the *Harrington* and *Kring* decisions. In State v. Williams, 50 Pac. 580 (Wash. 1897), the defendant, charged with burglary, and his witnesses were both manacled in the courtroom, and the former at a view of the allegedly burglarized premises. The court stated that there was no impelling necessity for this restraint which may have to some extent deprived the prisoner of the free and calm use of all his faculties.

[15] 5 Misc.2d 446, 166 N.Y.Supp.2d 59 (Richmond County Ct. 1957), *aff'd* 12 App.Div.2d 654, 210 N.Y.Supp.2d 800 (1960).