IN THE COURT OF APPEALS OF IOWA

No. 3-009 / 11-0012
Filed March 27, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

EARL JAMARE GRIFFIN,
Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County, Stephen C. Gerard, District Associate Judge.

Earl J. Griffin appeals his conviction for the crime of assault on correctional staff causing injury, in violation of Iowa Code section 708.3A (2009). **REVERSED AND REMANDED.**

Mark C. Smith, State Appellate Defender, and Theresa R. Wilson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Elisabeth Reynoldson, Assistant Attorney General, Janet M. Lyness, County Attorney, and Anne Lahey, Assistant County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

BOWER, J.

Earl J. Griffin appeals his conviction for the crime of assault on correctional staff causing injury, an aggravated misdemeanor in violation of Iowa Code section 708.3A (2009). In his appeal, Griffin argues the district court erred in requiring him to wear leg shackles during the trial. Because the district court failed to make specific findings justifying the use of restraints during the trial, we reverse.

I. Background Facts and Proceedings

Earl J. Griffin was charged with a single count of assault on correctional staff causing injury following an incident at the Iowa Medical and Classification Center at Oakdale, Iowa. The facts of the incident are not in dispute.

On November 15, 2009, Rickey Tremmel, a correctional officer at the Oakdale facility, escorted a nurse so that medications could be distributed to the inmates. Tremmel had earlier in the day reprimanded the inmates on either side of Griffin's cell for being disruptive. Griffin contends he stood up for the inmates and was himself subsequently disciplined. Upon arriving at Griffin's cell, Tremmel observed that Griffin had his hands in his pants. Tremmel instructed Griffin to remove his hands for safety and Griffin complied.

Due to the earlier incidents within the correctional facility, Tremmel opened Griffin's cell door only a short distance as a safety precaution. Having taken and swallowed his medication, Griffin reached through the opening and hit Tremmel in the eye. Griffin was able to escape his cell and continued to punch Tremmel until Tremmel was able to subdue him. Tremmel suffered facial

lacerations and other injuries. During the trial Griffin pointed to the prison culture and a need to appear tough among the other inmates as a basis for a necessity defense.

Trial commenced on November 1, 2010. Immediately before jury selection Griffin's trial counsel presented an oral motion to the court objecting to the use of leg chains on his client. Counsel argued that Griffin should not be restrained during trial and stated the chains would be unfairly prejudicial before the jury. Counsel did concede that a "shock belt" might be more appropriate or, in the alternative, in the event Griffin took the stand, he should be seated in the witness chair before the jury entered the courtroom so the jury would not see him walking to the stand in restraints. Counsel then proceeded to argue in favor of an alternative that Griffin be shackled while at counsel table, provided the jury could not see the restraints. Finally, counsel informed the court that Griffin had been seen in restraints by prospective jurors on his way to the courtroom. The State's response to these arguments was that the sheriff's office, as the party physically in charge of Griffin at the time, should be granted deference to determine the conditions of his security.

The court agreed with the State's arguments, stating that he "is in the custody of the sheriff, and is under a commitment to the Department of Corrections, and I think they have the right to enforce security as they see it necessary." The court did express a preference for a shock belt and further noted that it was impossible to keep an in-custody defendant separate from a public space occupied by potential jurors. The court also decided Griffin would

be seated at the witness stand before the jury would enter, should he decide to testify, but would remain physically restrained.

Griffin was convicted as charged and sentenced to an indeterminate term not to exceed two years, to be served concurrently with is prior sentence. Griffin appeals.

II. Standard and Scope of Review

Our review is for abuse of discretion. *State v. Wilson*, 406 N.W.2d 442, 448 (Iowa 1987). "The decision to impose physical restraints upon a defendant during trial lies within the informed discretion of the district court and will not be disturbed on appeal absent a clear showing of abuse of discretion." *Id.*

III. Discussion

Griffin argues the district court abused its discretion by failing to make an individualized determination on the need for some form of physical restraint. The State concedes that the court's ruling is an abuse of discretion by deferring to the sheriff and department of corrections. The State, however, argues Griffin failed to preserve error on the issue.

A. Preservation of Error

An issue must be raised and decided by the district court in order for error to be preserved. *Lamasters v. State*, 821 N.W.2d 856, 862 (Iowa 2012). Error preservation gives the district court an opportunity to correct its mistakes and provides us with an adequate record for review. *State v. Pickett*, 671 N.W.2d 866, 869 (Iowa 2003). The district court's ruling need not be complete; it is only necessary that the ruling indicate that the court considered the issue and gave a

ruling upon it. *Lamasters*, 821 N.W.2d at 864. If the district court fails to rule upon an issue, it is incumbent upon the aggrieved party to bring the issue to the court's attention so that it may decide the outcome. *Meier v. Senecaut*, 641 N.W.2d 532, 540 (Iowa 2002). An adverse ruling is sufficient to preserve error. *State v. Lovig*, 675 N.W.2d 557, 562 (Iowa 2004).

Whenever possible, a litigant should be able to assert, on appeal, any alleged errors he brought to the district court's attention. *State v. Fowler*, 268 N.W.2d 220, 223 (Iowa 1978). We are limited, however, to objections made and issues presented to the district court. *State v. Moses*, 320 N.W.2d 581, 585 (Iowa 1982). Issues not raised at the district court level are considered waived. *State v. Sanford*, 814 N.W.2d 611, 620 (Iowa 2012).

In the present action Griffin presented his arguments on the use of restraints immediately before jury selection began. Though counsel's arguments were somewhat less than forceful and were presented as much as a discussion on options with the court as opposed to an argument on important legal principles, the record is clear that counsel enunciated the danger of prejudice and advocated that Griffin not be restrained during trial. This request was denied.

The State argues that because the court adopted Griffin's proposal to avoid moving while restrained in front of the jury, Griffin failed to request a proper remedy. We disagree. Griffin, through counsel, stated his "belief that during trial he should not be restrained, that—I think that is extremely prejudicial for him in front of the jury." Griffin requested that he be unrestrained during trial. The fact

Griffin suggested alternative possibilities which would be less prejudicial does not undermine his requested remedy. The record is sufficient for our review, and the district court was given an opportunity to address the issue. Error was therefore preserved.[1]

B. Use of Restraints

Griffin argues the district court abused its discretion in failing to offer a particularized analysis of the need for restraints in his case.

Our supreme court has divided restraint cases into two categories. *Wilson*, 406 N.W.2d at 448. One category includes instances where the defendant is restrained in the courtroom during trial. *Id.* The other includes instances where a restrained defendant is briefly and inadvertently exposed to the jury while being transported through the courthouse. *Id.* In this case, we have examples of both.

1. Inadvertent exposure of restraints to the jury

When confronted with a restrained defendant who is briefly and inadvertently exposed to the jury during transportation, the defendant is required to show that he was prejudiced in some way or that his defense was somehow impaired by the incident. *Wilson*, 406 N.W.2d at 448.

In the present matter Griffin made no showing of prejudice, only an allegation that he was seen by prospective jurors. There was no proof offered

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[1] Griffin also argued at trial that he was seen by the jury while restrained while being transported to the courtroom. The district court acknowledged the event, but no remedy was requested by Griffin. Because, as discussed later, we find no prejudice, the district court's action on this point is affirmed. We do note that when ruling on the issue of restraint, the court addressed the jury exposure issue and gave what could be viewed as an adverse ruling on the subject.

that any juror actually saw him or that any juror was unfairly prejudiced by having done so. We are mindful of the fact that Griffin was being tried for a crime where incarceration was a necessary element of proof. "No prejudice can result from seeing that which is already known." *Estelle v. Williams*, 425 U.S. 501, 507 (1976). We therefore affirm the district court's action on this point.

2. Restraint during trial

"It is clear that requiring a defendant to appear in shackles before a jury is inherently prejudicial." *Wilson*, 406 N.W.2d at 449. Shackling a defendant in the presence of the jury should be avoided because: (1) it may prevent a defendant from freely participating with counsel in the defense, (2) diminish the inherent dignity of the trial process, and (3) it creates unfair prejudice by giving an indication that the defendant is a dangerous individual. *Id.*

The use of shackles or other physical restraints requires "close judicial scrutiny," and it is incumbent upon the State to prove the necessity of the practice. *State v. Shipley*, 429 N.W.2d 567, 569–70 (Iowa 1998). The court has a corresponding duty to weigh the necessity presented against the danger of prejudice. *Id.*

Our courts have approved the use of courtroom restraints in the past under varying circumstances. In *State v. Bartnick*, 436 N.W.2d 647, 649 (Iowa 1988), the court approved the use of restraints after the State presented evidence of specific threats by the defendant against the prosecutor and other court personnel, evidence of disturbances in jail caused by the defendant, and the testimony of a fellow inmate indicating the defendant's intent to cause further

disruption and harm. The Eighth Circuit followed a similar analysis in *Gilmore v. Armontrout*, 861 F.2d 1061, 1071 (8th Cir. 1988), where the district court specifically relied upon a defendant's dangerous history.

At the other end of the spectrum, however, in *State v. Wilmer*, No. 06-1339, 2007 WL 4322212, at *5 (Iowa Ct. App. Dec. 12, 2007), we reversed the district court after leg restraints were employed during trial. In doing so, we noted the trial court's failure to cite specific reasons for allowing the restraints and assigned error to the court's deference to the sheriff's standard operating procedure. *Id.*

The situation currently before the court is substantially similar. The district court failed to articulate any specific reason why Griffin presented a risk in the courtroom. Instead, the court said "the defendant is in the custody of the sheriff, and he is under commitment to the Department of Corrections, and I think they have the right to enforce security as they see it necessary." This is the exact same scenario we found to be an abuse of discretion in *Wilmer*, and though that case is not binding upon us today, we find the same analysis persuasive. The district court failed to articulate a specific need for restraints during trial and, rather than exercising its own discretion, handed the decision over to the sheriff's office. It is for the court, not the police, to determine what restraints are necessary during trial. *State v. Evans*, 169 N.W.2d 200, 210 (Iowa 1969). We therefore reverse the judgment of the district court and remand for a new trial.

REVERSED AND REMANDED.