IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. JAMES FRANK JAIME, Appellant.	NO. 82008-2 EN BANC Filed May 27, 2010

Stephens J.—This case comes before the court on direct review. James Frank Jaime was charged with one count of second degree murder. He was tried in front of a jury in a jailhouse courtroom and convicted. We are asked to consider whether holding Jaime's trial in a jailhouse courtroom violated his right to due process by eroding the presumption of innocence. We hold that it did and reverse Jaime's conviction and remand for a new trial.[1]

[1] We also took direct review on the issue of whether the trial judge abused his discretion in excluding an expert witness proposed by Jaime who intended to testify regarding the unreliability of eyewitnesses. Given our resolution of the trial locale issue, however, we need not reach the expert witness issue and decline to do so.

Facts and Procedural History

On the night of December 27, 2005, Ignacio Ornales was shot and killed in Yakima during an apparent drug deal. Jaime was arrested for the murder. During pretrial proceedings, the possibility was raised of holding Jaime's jury trial in a courtroom located in the county jail across the street from the county courthouse, rather than in the courthouse itself. Defense counsel strenuously objected on the basis that requiring Jaime to be tried in a jailhouse was akin to shackling him in front of the jury and would unfairly prejudice him. The prosecution argued that Jaime presented a serious security concern and should be tried in the jail. The prosecution also argued that this actually benefited Jaime because he would otherwise need to be handcuffed for transport between the jail and the courthouse and there was a risk the jury might see him during transport; a jailhouse trial eliminated that possibility. After hearing argument from counsel, the court decided to hold the trial in the jail. In rendering its oral decision, the court noted allegations concerning threats by Jaime or his friends against the witnesses and alluded to Jaime's history of violent behavior in jail and escape attempts, explaining that there was better security in the jail courtroom. The court also considered the convenience of holding the trial in the jail courtroom in that it was much easier to usher the jury in and out of the jail courtroom in a timely fashion because the jury room was just across the hall from the courtroom. The court explained that it agreed with the State that there was less chance the jury would see Jaime in handcuffs if the trial took place in the jail. Finally, the court noted the jailhouse courtroom was designed to

accommodate jury trials and was in design comparable to other courtrooms.

Jaime's trial commenced with voir dire on October 3, 2006. The trial court told the jurors, falsely, that the trial's location was simply the result of scheduling and administrative needs. The jury convicted Jaime of second degree murder. He appealed his conviction to Division Three of the Court of Appeals, arguing that holding his jury trial in the jailhouse compromised his constitutional right to due process and the presumption of innocence. Because the question concerning the location of trial presents a fundamental and urgent issue of broad public import, the Court of Appeals certified the case for direct review.[2] Jaime asks this court to reverse his conviction and remand for a new trial.

ANALYSIS

Jaime argues that a trial held in a jailhouse setting is the type of inherently prejudicial practice that erodes the presumption of innocence afforded to a criminal defendant and thereby violates his due process right to a fair trial. "The presumption of innocence, although not articulated in the Constitution, 'is a basic component of a fair trial under our system of criminal justice.'" *State v. Finch*, 137 Wn.2d 792, 844, 975 P.2d 967 (1999) (quoting *Estelle v. Williams*, 425 U.S. 501, 503, 96 S. Ct. 1691, 48 L. Ed. 2d 126 (1976)). In order to preserve a defendant's presumption of innocence before a jury, the defendant is "entitled to the physical indicia of innocence which includes the right of the defendant to be brought before

[2] An appeal in an unrelated case was stayed pending this decision. *State v. Sanchez*, No. 26816-1-III (Wash. Ct. App. Jan. 23, 2009).

the court with the appearance, dignity, and self-respect of a free and innocent man." *Id*. "Measures which single out a defendant as a particularly dangerous or guilty person threaten his or her constitutional right to a fair trial." *Id*. at 845. Such measures threaten a defendant's right to a fair trial because they erode his presumption of innocence; these types of courtroom practices are inherently prejudicial. *See*, *e.g.*, *id.* at 844-45.[3]

Thus, the first question we must answer is whether a jailhouse setting is inherently prejudicial and thereby offends due process. We begin with the recognition that "the courtroom in Anglo-American jurisprudence is more than a location with seats for a judge, jury, witnesses, defendant, prosecutor, defense counsel and public observers; the setting that the courtroom provides is itself an important element in the constitutional conception of trial, contributing a dignity essential to 'the integrity of the trial' process." *Estes v. Texas*, 381 U.S. 532, 561, 85 S. Ct. 1628, 14 L. Ed. 2d 543 (1965) (Warren, C.J., concurring) (quoting *Craig v. Harney*, 331 U.S. 367, 377, 67 S. Ct. 1249, 91 L. Ed. 1546 (1947)). Because the courtroom setting itself is essential to a trial's integrity, we should be wary of a setting that impermissibly influences a jury's decision-making process and jeopardizes the presumption of innocence.

"When a courtroom arrangement is challenged as inherently prejudicial, the

[3] Other courtroom practices that have been found to be inherently prejudicial include shackling and similar restraints, *State v. Hartzog*, 96 Wn.2d 383, 398-99, 635 P.2d 694 (1981), forcing a defendant to dress in prison garb, *Estelle*, 425 U.S. at 504, and allowing television cameras during trial, *Estes v. Texas*, 381 U.S. 532, 534-35, 85 S. Ct. 1628, 14 L. Ed. 2d 543 (1965).

question to be answered is whether an unacceptable risk is presented of impermissible factors coming into play." *In re Pers. Restraint of Woods*, 154 Wn.2d 400, 417, 114 P.3d 607 (2005) (citing *Holbrook v. Flynn*, 475 U.S. 560, 570, 106 S. Ct. 1340, 89 L. Ed. 2d 525 (1986)). A courtroom practice might present an unacceptable risk of impermissible factors coming into play because of "the wider range of inferences that a juror might reasonably draw" from the practice. *Holbrook*, 475 U.S. at 569.

In *Holbrook*, the Court considered whether the presence of security guards in the courtroom was inherently prejudicial. *Id*. at 568-69. Preliminarily, the Court did not focus its inquiry on the particular arrangement of the guards at Holbrook's trial. *Id*. Instead, it considered whether the presence of security guards *in general* was inherently prejudicial. *Id.* In concluding it was not, the Court found it significant that "[o]ur society has become inured to the presence of armed guards in most public places; they are doubtless taken for granted so long as their numbers or weaponry do not suggest particular official concern or alarm." *Id*. at 569.

Consistent with this analysis, the question here is whether the average juror would take for granted his or her presence in a jail, i.e., whether jurors are so inured to the experience of being in a jail building that it would have no effect on their perspective as jurors. The answer is self-evident. "'[R]eason, principle, and common human experience'" tell us that the average juror does not take for granted a visit to a jail. *Id.* at 569 (quoting *Estelle*, 425 U.S. at 504). The average juror does not frequent the jailhouse for the very reason that a jailhouse is not meant to be

a public space. Unlike a courthouse, in which the public is welcome to—and in some instances required to—conduct all manner of business, a jail serves a specific purpose not generally applicable to the public at large.

The difference between jailhouses and courthouses is evident even in their architectural contrast. Courthouses are often monuments of public life, adorned with architectural flourishes and historical exhibits that make them inviting to members of the public. Many of our county courthouses are on historical registries and are visited each year by school children, civic groups, and tourists. A jail, on the other hand, is singularly utilitarian. Its purpose is to isolate from the public a segment of the population whose actions have been judged grievous enough to warrant confinement. Jail buildings are typically austere in character, and entrance is subject to heightened security. Indeed, the Yakima County jail in which Jaime's trial was held was described by the judge in an unrelated trial as "a monolithic concrete building." Br. of Appellant at 111, *State v. Sanchez*, No. 26816-1-III (Wash. Ct. App. Jan. 23, 2009) (oral argument stayed pending decision in this case).

Given the character of a jail, a juror would not take a visit to a jailhouse for granted, nor would he or she be inured to the experience. *See Holbrook*, 475 U.S. at 569. A juror's experience with jail is very likely limited to what our societal discourse tells us of jails: they are high-security places that house individuals who need to be in custody. That the average juror would draw a corresponding inference from that experience is reasonable to surmise.[4]

[4] We note that the inherent prejudice standard does not require us to know how

Of course, some jurors' experience with a jail may be more personal but no less negative. What if, for example, one of Jaime's jurors was the victim of domestic violence whose abuser was housed in the jail? Her visit to the jail would not strike her as unremarkable or routine. It takes no great logical leap to conclude that such a juror's heightened awareness of her surroundings could contribute negatively to her view of the defendant.

In short, under the analysis of *Holbrook*, holding a trial in a jail courtroom is inherently prejudicial for two reasons. First, the setting is not in a courthouse, a public building whose purpose is to provide a neutral place to conduct the business of the law. Second, the setting that replaces the courthouse has a purpose and function that is decidedly not neutral, routine, or commonplace. Holding a criminal trial in a jailhouse building involves such a probability of prejudice that we must conclude it is "'inherently lacking in due process.'" *Holbrook*, 475 U.S. at 570 (quoting *Estes*, 381 U.S. 542-43).

Our decision accords with that of a neighboring jurisdiction that has considered the propriety of a trial held outside a courthouse. In *State v. Cavan*, 337 Or. 433, 98 P.3d 381 (2004), the Oregon Supreme Court considered a defendant's trial that was held in a state correctional facility. *Cavan* is not directly analogous to this case because it involved a trial held in a prison rather than a county jail, but we find that much of the court's description of the prejudice inherent in holding a trial

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jurors reacted to a particular security measure. A defendant need not show that jurors "actually articulated a consciousness of some prejudicial effect." *Holbrook*, 475 U.S. at 570.

in a prison applies to a jail. Both settings are places "that the public, as a general matter, is unlikely to visit," where the jury's safety and "to a large extent, the trial itself, are in the control of the [facility's] administrators and corrections personnel." *Id.* at 448. Most importantly, a jail, like a prison, "forcefully conveys to a jury the overriding impression of a defendant's dangerousness and . . . by extension, his or her guilt." *Id*.

Our decision should not be misunderstood to suggest that a jailhouse courtroom may never be used for a jury trial. As with other inherently prejudicial practices such as shackling, a jailhouse setting may be the "fairest and most reasonable way to handle" defendants who are found to present a serious safety risk. *Illinois v. Allen*, 397 U.S. 337, 344, 90 S. Ct. 1057, 25 L. Ed. 2d 353 (1970) (acknowledging that shackles or other restraints, while inherently prejudicial, may in some cases be necessary). But as with shackling, trial courts are obligated to undertake a careful analysis of the facts of the situation to determine whether the extraordinary measure is warranted.

We review trial management decisions for abuse of discretion. "A trial judge must exercise discretion in determining the extent to which courtroom security measures are necessary to maintain order and prevent injury." *State v. Hartzog*, 96 Wn.2d 383, 400, 635 P.2d 694 (1981). But "'[c]lose judicial scrutiny' is required to ensure that inherently prejudicial measures are necessary to further an essential state interest." *Finch*, 137 Wn.2d at 846 (quoting *Estelle*, 425 U.S. at 504). In particular, a trial court may impose restraints upon a defendant "'only when

necessary to prevent injury to those in the courtroom, to prevent disorderly conduct at trial, or to prevent an escape.'" *Id*. (quoting *Hartzog*, 96 Wn.2d at 398). The judge's decision must take into account "specific facts relating to the individual" and be "founded upon a factual basis *set forth in the record*." *Hartzog*, 96 Wn.2d at 399-400 (emphasis added).

It is within this context that we review the trial court's decision to utilize a jailhouse courtroom for Jaime's jury trial. We conclude that the record does not support the trial court's decision. While there was some discussion indicating that Jaime presented a security concern and an escape risk, Verbatim Report of Proceedings (Oct. 2, 2006) at 40, this was based upon unverified representations made by the prosecutor, with no fact-finding conducted by the trial court.

Moreover, the trial court considered impermissible factors involving convenience in making its decision, as well as general concerns that would be applicable to any defendant who is in custody during trial, namely the risk that jurors might see Jaime being transported in handcuffs from the jail to the courthouse. *Id*.; *see State v. Gonzalez*, 129 Wn. App. 895, 905, 120 P.3d 645 (2005) (stating that where "juror views of restrained defendants are inevitable in this county . . . then it is the transport procedures which must change, not the constitutional presumption of innocence"). Without a factual record that Jaime's trial presented particular security concerns, it cannot be said that the prejudicial measure of holding the trial in the jail was "necessary to further an essential state interest." *Finch*, 137 Wn.2d at 846. Where the risk of eroding the presumption of

innocence is presented, the trial court may not rely on mere assertions but must develop a factual record to support the extraordinary measure of holding a trial in a jail building.[5]

CONCLUSION

We erect courthouses for a reason. They are a stage for public discourse, a neutral forum for the resolution of civil and criminal matters. The unique setting that the courtroom provides "is itself an important element in the constitutional conception of trial, contributing a dignity essential to 'the integrity of the trial' process." *Estes*, 381 U.S. at 561 (Warren, C.J., concurring) (quoting *Craig*, 331 U.S. at 377). The use of a space other than a courthouse for a criminal trial, particularly when that space is a jailhouse, takes a step away from those dignities. We hold that the setting of Jaime's trial infringed upon his right to a fair and impartial trial, and we remand for proceedings consistent with this opinion.

[5] We would also be remiss if we failed to express our disapproval of the "curative instruction" that was given here with the goal of remedying any prejudice arising from the trial's location. The trial judge's statement was as follows: "[W]e only have three jury rooms for deliberations. And so with a longer trial like this, the court administrator will frequently assign that trial over here [to the jail] where we have a jury room." Suppl. Verbatim Excerpt of Proceedings (Oct. 3, 2006) at 2. We are troubled by the statement because it was not true. The relationship between a trial judge and a jury relies on mutual trust, and the making of false statements to a jury by a judge should never be countenanced. Furthermore, even if the statement had been true, it provided no basis for holding Jaime's trial in the jail.

AUTHOR:
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WE CONCUR:
Justice Susan Owens

Justice Charles W. Johnson

Justice Gerry L. Alexander

Justice Richard B. Sanders

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