



**Department of
PUBLIC DEFENSE**

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January 15, 2019

Chief Judge Veronica Galvan
King County Superior Court
Maleng Regional Justice Center
401 Fourth Ave N,
Kent, WA 98032

Your Honor,

We write to raise concerns about the shackling of defendants during their court hearings at the Regional Justice Center. We have confirmed that the Court's current practice, to the extent the court makes findings at all, is to defer to Department of Adult and Juvenile Detention (DAJD) regarding whether a defendant will remain shackled during their hearing. This practice contravenes case law requiring the Court to make individualized findings before allowing a defendant to remain shackled during a hearing. We have also reviewed hearings where attorneys object to shackling of their clients and their objections are ignored.

Attached are two transcripts. In one, the judge notes an objection without action and in the other the judge simply states that he understands the attorney's position. As a result, defendants remain shackled throughout hearings with no individualized finding. Of note, this practice frequently happens in cases involving competency, which further dehumanizes some of the legal system's most vulnerable and underserved participants.

It is the Court's responsibility to make specific findings before allowing any defendant to be shackled at any hearing, even where a jury is not present. *See State v. Walker*, 185 Wn. App. 790, 797, 344 P.3d 227, 231 (2015). In *Walker*, Division I of the Court of Appeals held that a trial court should not allow the use of restraints unless the Court "conduct[s] a

hearing and enter[s] findings into the record that are sufficient to justify their use on a particular defendant.” *Id.* at 800. This decision must not be delegated to jail officials. *Id.* at 797. The reason for this restriction is that such shackling interferes with a defendant’s right to be present at every hearing, interferes with a defendant’s ability to consult with their attorney and is an “affront to human dignity.” *Id.*

In *State v. Lundstrom*, Division II of the Court of Appeals reviewed the same issue only three years after the *Walker* court handed down its decision, despite mootness in that case, because it found that the shackling of defendants is a continuing issue of public importance. 6 Wn. App. 388, 393, 429 P.3d 1116, 1119–20 (2018), *review denied*, 193 Wn.2d 1007, 443 P.3d 800 (2019). The *Lundstrom* court agreed with the *Walker* court and held that trial courts, not jail officials, must make individualized findings before allowing a defendant to remain shackled in court, and that failure to do so is constitutional error. *Id.* Further, the court held that it is constitutional error for a trial court to fail to make such findings. *Id.*

Considering this law and the enclosed transcripts, we request that the King County Superior Court take all necessary steps to guarantee that no defendant is shackled during any court hearing unless there is an individualized determination by the Court that shackling is necessary. Individualized determinations are both constitutionally required and consistent with the Court’s commitment to fair resolution of legal matters for participants in the system.

If you have any questions or concerns or would like to discuss this in greater detail, please do not hesitate to contact us. We look forward to your response and to seeing our individuals who are brought into the Regional Justice Center courtrooms afforded the constitutional guarantees they deserve.

Thank you,

 /s David Montes

David Montes

Special Counsel for Criminal Policy and Practice

La Rond Baker

Special Counsel for Affirmative Litigation and Policy

King County Department of Public Defense

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/s Nick Allen

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Antoinette M. Davis

Senior Staff Attorney

John Midgley

Senior Staff Attorney

American Civil Liberties Union of Washington

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Seattle, WA 98111



RECYCLED
PAPER

THE SUPERIOR COURT FOR THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

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STATE OF WASHINGTON,)
 Plaintiff,)
 v.) Cause No. 18-1-01345-0 KNT
 BRANDON JACKSON,)
 Defendant.)

EXCERPT OF HEARING

The Honorable Chad Allred Presiding

September 27, 2019

Transcribed by: Marjorie Jackson, CET
 Reed Jackson Watkins, LLC
 Court-Approved Transcription
 206.624.3005

A P P E A R A N C E S

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On Behalf of Plaintiff:

JOCELYN PATRICIA MCCURTAIN

King County Prosecuting Attorney's Office

516 Third Avenue, Suite W554

Seattle, Washington 98104

On Behalf of Defendant:

MICHAEL A. SCHUELER

Associated Counsel for the Accused Division

King County Office of Public Defense

420 W Harrison Street, Suite 201

Kent, Washington 98032-4491

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September 27, 2019

(9:19:52)

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5 MR. SCHUELER: And good morning, Your Honor. Michael
6 Schueler, ACA, on behalf of Brandon Jackson, who is present
7 to my left, presently shackled. I want to make a formal
8 objection under State vs. Jackson, which is from August
9 20th, Division II, 447 P.3d, 633. I don't believe there's
10 an individualized inquiry that's been made as to why
11 Mr. Jackson is restrained pretrial. I would ask the Court
12 to unshackle him.

13 I have worked with Brandon for a number of -- actually,
14 sa year at this point, on different cases. He has never
15 been violent or aggressive with me. I do believe this is a
16 violation of his due process rights to be in court with
17 free access to counsel, and case law is clear that there
18 needs to be an individualized inquiry before shackling
19 occurs.

20 THE COURT: What's -- and this is an August 20th, 2019
21 case?

22 MR. SCHUELER: Yes, Your Honor. It's the most recent
23 case I could find, Division --

24 THE COURT: Give me the cite.

25 MR. SCHUELER: Yes. 447 P.3d, 633, State vs. Jackson

1 out of Division II. There's a number of cases recently
2 that have addressed this, but that was the quickest
3 citation --

4 THE COURT: P.3d...

5 MR. SCHUELER: 633.

6 THE COURT: Okay. All right. Let's ask the -- let me
7 ask the officers today.

8 Do we have a -- why don't you --

9 OFFICER: It's due to his housing location where he's at
10 right now. It's our ad-seg area, is the reason why he's in
11 restraints.

12 THE COURT: Okay.

13 Mr. Schueler, do you wish to make any further record?

14 MR. SCHUELER: As I said before, Your Honor, I have
15 worked with Brandon for a number of -- for over a year at
16 this point on various cases. I don't believe he's violent,
17 a danger to myself, a danger to any court staff, a danger to
18 anyone at this point. He's never been violent or
19 aggressive.

20 I understand the jail has a blanket policy, but I don't
21 think that blanket policy satisfies the individualized
22 inquiry that the Court of Appeals and the Supreme Court of
23 Washington continuously say we need to do, so I would ask
24 the Court to unshackle him.

25 THE COURT: Okay. That request is denied, but your

1 objection is noted for the record.

2 MR. SCHUELER: Thank you.

3 (9:21:31)

4 (Conclusion of requested excerpt)

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STATE OF WASHINGTON)
)
COUNTY OF SNOHOMISH)

I, the undersigned, do hereby certify under penalty of perjury that the foregoing court proceedings were transcribed under my direction as a certified transcriptionist; and that the transcript is true and accurate to the best of my knowledge and ability, including any changes made by the trial judge reviewing the transcript; that I received the audio and/or video files in the court format; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of January, 2020.

Marjorie Jackson

Marjorie Jackson, CET

THE SUPERIOR COURT FOR THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

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STATE OF WASHINGTON,)
 Plaintiff,)
 v.) Cause No. 19-1-03453-6 KNT
 SHADBRACK BARSTAD,)
 Defendant.)

EXCERPT OF HEARING

The Honorable Chad Allred Presiding

January 3, 2020

Transcribed by: Marjorie Jackson, CET
 Reed Jackson Watkins, LLC
 Court-Approved Transcription
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A P P E A R A N C E S

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On Behalf of Plaintiff:

DANIEL J. SOUKUP

King County Prosecuting Attorney's Office

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Seattle, Washington 98104

On Behalf of Defendant:

JOSHUA R. KELLEMAN

Associated Counsel for the Accused Division

King County Office of Public Defense

420 W Harrison Street, Suite 201

Kent, Washington 98032-4491

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January 3, 2020

(9:32:09)

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5 MR. KELLEMEMEN: Your Honor, the one thing -- I always want
6 to make a record of this whenever I see a client is
7 restrained in court. Mr. Barstad tells me that he has been
8 put in segregation for the last few days. I understand the
9 jail's usual policy is that anyone that's in that particular
10 unit needs to be in restraints.

11 I make my standing objection that I have made in front of
12 Your Honor many times that a more individual determination
13 needs to be made by the Court about whether or not someone
14 needs to be in restraints than just that they're in a
15 particular jail security status.

16 THE COURT: And I understand your position.

17 (9:32:45)

18 (Conclusion of requested excerpt)

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C E R T I F I C A T E

STATE OF WASHINGTON)
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COUNTY OF SNOHOMISH)

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IN WITNESS WHEREOF, I have hereunto set my hand
this 9th day of January, 2020.

Marjorie Jackson

Marjorie Jackson, CET