

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Greenville County
Edward W. Miller, Circuit Court Judge

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Oct 03 2025

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

RAY KELLY,

PETITIONER

Opinion No. 25-UP-247 (S.C. Ct. App. Filed July 16, 2025)
APPELLATE CASE NO. 2025-001854

APPENDIX

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Appeal from Greenville County

Honorable Edward W. Miller, Circuit Court Judge

THE STATE,

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V.

RAY L. KELLY,

APPELLANT

APPELLATE CASE NO. 2022-001449

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1.

Whether the trial court erred in forcing Appellant, who was on trial for murdering a police officer, to appear before the jury in a restraint chair, where the restraint chair was not justified by the circumstances, since restraints must be case specific?

2.

Whether the trial court erred in requiring Appellant to remain shackled throughout his trial for murdering a police officer, where shackling was not justified by the circumstances, since shackling must be case specific?

3.

Whether the trial court erred in Appellant's trial for murdering a police officer, where it failed to exercise any discretion regarding the large number of uniformed officers in the gallery (35 – 40 officers in uniform including tactical gear), since Appellant had the right to a fair trial free from outside influence?

4.

Whether the trial court erred in admitting repeated depictions (video, audio, and photographic) of the fatal crash and its aftermath, where the probative value of the cumulative evidence was substantially outweighed by the danger of unfair prejudice, since the evidence should have been excluded pursuant to Rule 403, SCRE?

5.

Whether the trial court erred in admitting evidence pertaining to a blood draw purportedly of Appellant's blood, which was taken for medical purposes and demanded by law enforcement for prosecution purposes, where the chain of custody was wholly inadequate, since the State must establish a chain of custody as far as practicable?

STATEMENT OF THE CASE

During the November term of 2020, a Greenville County Grand Jury indicted Appellant for murder, two counts of resisting arrest with assault, driving without a license, and providing false information to police. During the September term of 2021, a Greenville County Grand Jury indicted Appellant for trafficking cocaine base, 28 – 100 grams, and possession of a weapon during the commission of a violent crime. During the November term of 2022, a Greenville County Grand Jury indicted Appellant for a third count of resisting arrest with assault. Appellant was also charged with speeding and following too closely.¹

Appellant was tried before the Honorable Edward W. Miller and a jury, from September 26 – 29, 2022. W. Walter Wilkins, III, and Grace Moroney prosecuted the case. Appellant appeared pro se with Mindy Lipinski as standby counsel during initial portions of the trial. Standby counsel subsequently stepped in to represent Appellant as his counsel.²

Appellant was acquitted of speeding and following too closely. Appellant was convicted as indicted on the remaining offenses, and he was sentenced to serve: life without parole for murder; thirty years for trafficking cocaine base, 28 – 100 grams, third offense; five years for possession of a weapon during the commission of a violent crime; ten years for each count of resisting arrest with assault; time served for driving without a license; and time served for giving false information to police.³

This appeal follows.

¹ R. 701-714; R. 100, l. 21 – 101, l. 10.

² R. 61; R. 166, l. 17 – 171, l. 20; R. 73, ll. 4-24.

³ R. 685, l. 20 – 687, l. 7; R. 697, ll. 15-23; R. 715-721.

ARGUMENT

Introduction

Appellant stood trial for causing the death of a police officer who was killed in the line of duty after being hit by a tractor trailer. Although Appellant did not commit misconduct in court or threaten misconduct in court, he refused to come out of his holding cell and was strapped into a restraint chair. Appellant was thus tried before the jury in a restraint chair and while shackled. Thirty-five to forty police officers in uniform (some in tactical gear) observed the trial from the gallery. The State repeatedly admitted depictions of Decedent getting hit by the eighteen-wheeler and dying in the road. Appellant did not receive due process and a fair trial under these circumstances: conviction in a court of law is not by passion, prejudice, or show of force.

Relevant facts

On the afternoon of October 20, 2020, Master Deputy Conley Jumper (Decedent) of the Greenville County Sherriff's Department was killed while trying to arrest Appellant. Appellant was pulled over for speeding and following too closely by interdiction units looking for crime on I-85. During the stop, Deputy Wasserman smelled marijuana and decided to search Appellant's car. When Wasserman told Appellant of his intention to search, Appellant tried to run and get back in his car. A struggle ensued which included Appellant, Wasserman, Decedent, and a third officer, Deputy Ledbetter.⁴

The car was parked close to the white line which demarcated the shoulder from the busy road. Interstate traffic passed by the struggling men. Appellant succeeded in getting back in the car and Decedent entered the car after him, with both men crammed in the driver's compartment; Decedent face down on top of Appellant's lap with Decedent's legs hanging out of the open

⁴ R. 140, l. 3 – 102, l. 12; R. 237, l. 6 – 248, l. 23; State's Exhibit #2.

driver's door. The car entered traffic while Decedent and Appellant struggled over the steering wheel. The car and Decedent's lower body were struck by an eighteen-wheeler. Decedent was ejected from the car and rolled to a stop; Appellant's car was struck by a fourth interdiction unit, driven by Deputy Harrison, and Appellant was ejected from the car. Although emergency medical personnel arrived quickly, Decedent died within twenty minutes from blunt force injuries.⁵

Appellant did not want to be represented by a lawyer, and after warnings pursuant to *Faretta v. California*, 422 U.S. 806 (1975), trial began with Appellant representing himself. Standby counsel was present. The arguments Appellant made in his defense were misguided. Appellant repeatedly questioned the court's jurisdiction; he questioned the trial judge's oath and the solicitor's birth certificate. He stated he was a "beneficiary of the trust." He made general objections to the proceedings: "I object to the proceedings. I do not understand the jurisdiction." However, Appellant did not commit any misconduct in the courtroom—he did not threaten anyone with physical harm, he did not physically act out in any manner, and he did not otherwise present a security threat. He did not use profanity.⁶

The trial proceeded through voir dire, jury selection, swearing of the jury, and the court's introductory remarks. The proceedings broke for lunch, and when they resumed, the court observed that Appellant was now in "a special chair." Appellant stated, "Let the record reflect that I'm not here willingly. I'm handcuffed, shackled. I'm tied to a chair. I was insulted. And I

⁵ R. 150, ll. 4-15; R. 161, l. 19 – 166, l. 6; R. 247, l. 14 – 259, l. 19; R. 280, l. 2 – 289, l. 6; R. 305, ll. 7-20; R. 284, l. 8 – 344, l. 3; R. 347, l. 3 – 447, l. 8; State's Exhibit #2.

⁶ R. 46, l. 20 – 23, l. 9; R. 71, ll. 4-14; R. 83, ll. 8-11; R. 92, l. 16 – 97, l. 14; R. 112, l. 24 – 123, l. 16.

do not choose to participate in any of the proceedings. . .” The court asked why Appellant was in the restraint chair.⁷

THE SLED OFFICER: Your Honor, it was when—he refused to come out of his cell. And then when we went to assist him in standing, it was active resistance towards us at that point in time. So he was placed in the chair and brought to the courtroom.

THE COURT: Okay.

DEFENDANT KELLY: I object. That’s a lie. I was physically assaulted.

THE COURT: Okay.

DEFENDANT KELLY: It’s on camera.

THE COURT: All right. Well, let me—Mr. Kelly, we’re just doing our best to accommodate you.

DEFENANT KELLY: I don’t want any accommodations.

THE COURT: Okay.

DEFENDANT KELLY: I don’t want any participation in this circus.

THE COURT: All right, Well, this is your day in court, so to speak. All right. Well, let’s—let’s bring the jury in. Hold them one second, the jury I’m talking about. Just for the record, **I want to make a finding that the Defendant has been disruptive. And that because of that behavior, pursuant to the guidelines, as I understood them from the United States Supreme Court laid out in *Illinois v. Allen*, I approve the use of this restraint chair.**⁸

The Solicitor made two body-worn camera recordings of what happened in Appellant’s holding cell a part of the record. These recordings are Court’s Exhibit #9 and Court’s Exhibit #10, and are on file with this Court. The recordings show that after Appellant refused to come out of the holding cell, approximately nine officers approached and entered the cell with a restraint chair, attempted to place Appellant in the restraint chair, and Appellant did not

⁷ R. 131, l. 13 – 134, l. 10.

⁸ R. 134, l. 11 – 135, l. 12 (emphasis added).

cooperate. Instead, he squirmed, struggled, and jerked his shackled hands around. Appellant was placed into the chair and wheeled into the courtroom while strapped into the chair and shackled. Court's Exhibit #4 and Court's Exhibit #5 are photographs of Appellant in the courtroom in the restraint chair that were published by the media. These photographs are also on file with this Court.⁹

The trial proceeded through the prosecution's opening statement. Appellant did not give an opening statement. When the State finished its direct examination of its first witness, Appellant asked to speak with standby counsel. There was a break in proceedings and Appellant agreed to be represented by standby counsel. He also told standby counsel he would walk into the courtroom. Thereafter, the court noted Appellant was no longer in the restraint chair, but he remained shackled except for his writing hand. The court broke for the evening.¹⁰

The next day, defense counsel made a motion to remove Appellant's shackles. Defense counsel argued the shackles should be removed since they were audible, and that although they were not visible, "you can nonetheless hear the metal, the belly chain that he's in, the handcuffs that he's in, the leg restraints that he's in. And so the Defense is making a motion to remove those so as to mitigate it." The court ruled, "I go back to the seminal case of *Illinois vs. Allen* about he could be gagged and it would be appropriate if he earned that. So he is where he is based on his conduct up to this point." Trial continued.¹¹

Crack cocaine and a pistol had been found in Appellant's trunk after the crash. The pistol was in a plastic box in the trunk and the crack cocaine (fifty-five grams) was in a plastic bag

⁹ R. 634, l. 19 – 635, l. 5; R. 186, l. 16 – 187, l. 10.

¹⁰ R. 166, l. 15 – 171, l. 1; R. 175, ll. 14-17.

¹¹ R. 193, l. 20 – 194, l. 25.

inside of a drawstring bag which contained laundry. The State used DNA on the laundry and other items in the trunk to tie Appellant to the drugs. Clothing inside the laundry bag was tested for DNA. DNA analysis showed that several items of clothing likely had Appellant's DNA on them. For example, as to the test results on a mixture of DNA from a pair of underwear, "the results for those comparisons were that the DNA profile is approximately 62 octillion times more likely if Ray Kelly and two unidentified unrelated individuals contributed to the mixture than if three unidentified unrelated individual contributed to the mixture."¹²

The State had obtained Appellant's DNA standard by getting a search warrant for Appellant's blood. Appellant was taken to the hospital for medical treatment after the crash. It was a swab from this blood sample, taken for medical purposes, that was used for comparison by the DNA analyst. Investigator Davis said he went to the hospital, showed the attending nurse the search warrant, and learned Appellant had been assigned a "trauma name" by the hospital. Davis then obtained vials of blood labeled "TR 2020 Montana 078." Davis did not know who drew the blood and he was not present when it was collected. Davis testified,

I met Greenville County Public Safety, their forensic services at the hospital. And with the—and some Greenville County deputies that were either sitting with at the time later identified as Mr. Kelly . . . I identified the search warrant to the attending nurse for him to confirm that that was the subject who I had listed in the search warrants since we only knew him by a trauma name to execute the search warrant. And then I, also, took the search warrant over to where the blood was kept and showed then that in order to obtain the correlating blood to that trauma name.¹³

Defense counsel objected to the blood and DNA evidence based on a fatally defective chain of custody, since the State could not identify who had drawn and labeled the blood.

¹² R. 433, l. 8 – 435, l. 18; R. 541, l. 19 – 543, l. 19; R. 578, l. 11 – 579, l. 23.

¹³ R. 466, l. 10 – 481, l. 8; R. 480, ll. 3-16; R. 572, ll. 19-25.

Defense counsel argued: “their failure to identify the person who drew and labeled the blood purported to be that of Mr. Kelly renders the chain fatally defective.” The court ruled the State had established chain of custody; the blood and DNA evidence was admitted.¹⁴

Witnesses, including an expert in accident reconstruction, testified about the crash. The officers involved in the traffic stop, crash, and subsequent scene were equipped with body-worn cameras and microphones, and their cars had dashboard cameras. Initially, some of these recordings came in without objection (State’s Exhibits #1 – 3; State’s Exhibit #5). However, when the prosecutor piled on, counsel objected pursuant to Rule 403, SCRE. These exhibits included video footage, audio recordings, and photographic evidence (State’s Exhibit #6; State’s Exhibit #7; State’s Exhibit #8; State’s Exhibit #9; State’s Exhibit #26), and are on file with this Court. Counsel argued the danger of unfair prejudice occasioned by this cumulative presentation substantially outweighed the probative value of the evidence. The court overruled the objections. The State repeatedly played and replayed depictions of Decedent being hit by the tractor trailer and Decedent as he lay dying in the road. This included futile attempts to render aid to Decedent and his last remarks.¹⁵

As the trial proceeded, defense counsel made a motion that uniformed law enforcement officers in the gallery be instructed to appear in plainclothes. Defense counsel noted that in addition to four plainclothes SLED officers and two uniformed courthouse deputies, the prior day there were:

any number of officers in the courtroom. I think the danger is of unfair prejudice that Mr. Kelly is somehow this violent person that requires this top-level security . . . **I am concerned that the**

¹⁴ R. 467, l. 17 – 481, l. 8; R. 475, ll. 16-19; R. 476, l. 6 – 477, l. 10; R. 572, ll. 19-25.

¹⁵ R. 359, l. 10 – 360, l. 11; R. 400, ll. 2-20; R. 206, ll. 6-16; R. 255, l. 14 – 258, l. 1; R. 281, ll. 11-16; R. 284, ll. 3-15; R. 327, ll. 7-25; R. 368, ll. 4-12; R. 402, l. 18 – 403, l. 14.

multitude of officers present presents an unfair prejudice to which he cannot sufficiently respond. I do appreciate the plain clothes officers. I believe in other trials I have been in the Court has instructed that any officers who aren't witnesses not appear in uniform so we don't kind of get this thin blue line law enforcement kind of pressure on the secure [sic]. And **I would ask this Court impose that similar restriction, that if you're not a witness and you want to come and support your fellow officer that you do so in plain clothes.**"¹⁶

The court ruled that, "this is a matter involving three victims who were sheriff's deputies. And that's just the fact of the matter. And I am not inclined to grant that motion requiring them to change clothes."¹⁷

Counsel subsequently renewed her motion, noting there were *now twenty or twenty-five officers in the courtroom*. Defense counsel moved that the officers be instructed to wear plainclothes, or that the court send them into another courtroom to view the proceedings via livestream. Defense counsel noted the number of officers was "overwhelming" and "unduly prejudicial." "I feel the need to renew our motion given the number is climbing." The court denied the motion.¹⁸

Later, counsel moved for a mistrial based on the overwhelming presence of law enforcement officers in the courtroom. Counsel renewed her motion "to limit the number of law enforcement officers in the courtroom, particular [sic] during the closing argument. *We're now upwards of 35 to 40 officers in this courtroom, some in tactical gear, various uniforms of any kind.*" "[T]he prejudice to the Defendant is overwhelming. It could be live streamed in another courtroom, They could have appeared in any—plain clothes. There's any number of options that

¹⁶ R. 183, l. 2 – 184, l. 19.

¹⁷ R. 185, l. 25 – 186, l. 4.

¹⁸ R. 600, l. 7 – 601, l. 14.

were available and have been raised by the Defense that would have mitigated that prejudice. And so for that, we ask the Court to consider alternatives so as not to unduly prejudice the jury.” The court denied the motions. After the verdicts were returned, counsel moved for a new trial based upon “passion and prejudice” due to “the heavy law enforcement presence.” The court denied the motion. Notably, at no time during counsel’s motions did the solicitor or the trial court dispute her estimates of the number of officers in the room or her description of them as being in uniform, with some in tactical gear.¹⁹

The State proceeded on a theory of *Mouzon*²⁰ malice in this case; the defense contested malice. The jury struggled with the case, deliberating for just shy of four hours. The jury asked, “Is manslaughter an option for a guilty charge or is murder the only option?” It asked for written instructions. It asked whether it could see statements from the truck drivers (the truck drivers were referenced in the trial but not called as witnesses). Ultimately, the jury acquitted Appellant of the underlying traffic offenses which were the basis for the traffic stop, but it convicted him of the other offenses.²¹

¹⁹ R. 624, l. 9 – 269, l. 9; R. 634, ll. 1-16; R. 688, l. 19 – 689, l. 13.

²⁰ *State v. Mouzon*, 231 S.C. 655, 662, 99 S.E.2d 672, 675 (1957), held that evidence is sufficient to sustain a verdict of murder where, “Although it may be fairly assumed there was no actual intent to kill or injure another, there is evidence of such recklessness and wantonness as to indicate a depravity of mind and disregard of human life, from which a jury could infer malice.”

²¹ R. 682, l. 21 – 685, l. 14. The jury notes are located at pp. 699-700 of the Record on Appeal.

1.

The trial court erred in forcing Appellant, who was on trial for murdering a police officer, to appear before the jury in a restraint chair, where the restraint chair was not justified by the circumstances, since restraints must be case specific.

Appellant’s failure to come out of the holding cell was not a threat to courtroom security that justified requiring him to appear before the jury in a restraint chair. Similarly, although Appellant’s pro se objections were obnoxious, speech is not conduct and it did not necessitate total physical restraint. The court did not assess whether the restraint chair was necessary—instead, it seemingly deferred to courtroom security’s decision.

Standard of review

“In criminal cases, the appellate court sits to review errors of law only and is bound by factual findings of the trial court unless an abuse of discretion is shown.” *State v. Hawes*, 411 S.C. 188, 190, 767 S.E.2d 707, 708 (2015) (citations omitted). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” *State v. Hatcher*, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011). “Whether a defendant is restrained during trial is within the trial judge’s discretion. The trial judge is to balance the prejudicial effect of shackling with the considerations of courtroom decorum and security.” *State v. Tucker*, 320 S.C. 206, 209, 464 S.E.2d 105, 107 (1995). *See State v. Heyward*, Op. No. 28182 (S.C. Sup. Ct. filed Oct. 5, 2023) (Howard Adv. Sh. No. 40 at 11) (trial court’s failure to assess whether shackles were necessary or to ensure the jury could not see them was an abuse of discretion).

Discussion

“[A] defendant can lose his right to be present at trial if, after he has been warned by the judge that he will be removed if he continues his disruptive behavior, he nevertheless insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom.” *Illinois v. Allen*, 397 U.S. 337, 343 (1970). “Once lost, the right to be present can, of course, be reclaimed as soon as the defendant is willing to conduct himself consistently with the decorum and respect inherent in the concept of courts and judicial proceedings. We believe trial judges confronted with disruptive, contumacious, stubbornly defiant defendants must be given sufficient discretion to meet the circumstances of each case.” *Id.*, 397 U.S. at 343-44.

The defendant in *Allen* argued with the judge in an abusive and disrespectful manner and threatened the judge, saying that the judge would be a “corpse” after the lunch break. The defendant tore counsel’s file and threw the papers on the floor. The court repeatedly warned the defendant it would remove him after another outburst, removed him after outbursts, permitted him in again later, only for more problems to ensue, including vile and abusive language. Eventually, the defendant was permitted to be present for the remainder of the trial. *Id.*, 397 U.S. at 340-41.

The Supreme Court concluded, “there are at least three constitutionally permissible ways for a trial judge to handle an obstreperous defendant like Allen: (1) bind and gag him, thereby keeping him present; (2) cite him for contempt; (3) take him out of the courtroom until he promises to conduct himself properly.” *Id.*, 397 U.S. at 344. “Allen’s behavior was clearly of such an extreme and aggravated nature as to justify either his removal from the courtroom or his

total physical restraint.” *Allen*, 397 U.S. at 346. However, “no person should be tried while shackled and gagged except as a last resort.” *Id.* at 344.

“Visible shackling undermines the presumption of innocence and the related fairness of the factfinding process.” *Deck v. Missouri*, 544 U.S. 622, 630 (2005). “[G]iven their prejudicial effect, due process does not permit the use of visible restraints if the trial court has not taken account of the circumstances of the particular case.” *Id.*, 544 U.S. at 632. “Such a determination may of course take into account the factors that courts have traditionally relied on in gauging potential security problems and the risk of escape at trial.” *Id.* “[A] judge [may], in the exercise of his or her discretion, [] take account of special circumstances, including security concerns, that may call for shackling. In so doing, it accommodates the important need to protect the courtroom and its occupants. But any such determination must be case specific; that is to say, it should reflect particular concerns, say, special security needs or escape risks, related to the defendant on trial.” *Id.*, 544 U.S. at 633.

“This careful balancing of the competing interests—and articulation of the balancing on the record for the benefit of appellate courts—is necessary to honor the defendant’s due process rights whenever the State seeks to restrain the defendant in the jury’s presence.” *State v. Heyward*, Op. No. 28182 (S.C. Sup. Ct. filed Oct. 5, 2023) (Howard Adv. Sh. No. 40 at 11). “[A] defendant in a criminal trial may not be required to wear handcuffs, leg shackles, or other restraints in the presence of the jury unless the trial court makes specific findings on the record as to the particular reasons the restraints are necessary. If the court finds restraints are necessary, it must make every reasonable effort to ensure the restraints are not visible to the jury.” *Heyward*, Howard Adv. Sh. No. 40 at 11.

The trial court did not undertake the careful balancing of competing interests and it did not articulate why a verbally “disruptive” defendant who refused to come out of the holding cell required a restraint chair. This was error. The facts of *Allen* are not like the facts in this case. Appellant did not use vile language, destroy property, or threaten to kill the judge, as Allen did. Total physical restraint, a measure of last resort, was not befitting these circumstances. Moreover, Appellant stated he did not want to be present. When Appellant appeared before the court in the restraint chair, the trial court should have explored alternatives instead of leaving Appellant in the chair before the jury.

The trial court had other options. If it found Appellant was verbally disruptive, it could have gagged him. *Illinois v. Allen*, 397 U.S. at 343-44 (one permissible way for judge to handle obstreperous defendant is to gag him). If it found Appellant’s refusal to come out of his cell violated courtroom decorum, it could have concluded Appellant had waived his right to proceed pro se and appointed standby counsel to act as counsel. *United States v. Bush*, 404 F.3d 263, 271 (4th Cir. 2005) (“At bottom, the *Faretta* right to self-representation is not absolute, and the government’s interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant’s interest in acting as his own lawyer.”) (cleaned up). The court could have excluded Appellant from the courtroom.²² *In Interest of Dwayne M.*, 287 S.C. 413, 414, 339 S.E.2d 130, 130 (1986) (citing *Illinois v. Allen*, 397 U.S. 337) (“A defendant may be excluded from the courtroom when his conduct is disruptive or is interfering with the progress of the trial.”). If the court had found Appellant presented a physical threat (instead of merely finding Appellant was “disruptive”), a stun belt would have been a less prejudicial manner of restraint, since it would

²² This was not a case in which identity was in dispute. See *State v. Moore*, 308 S.C. 349, 351, 417 S.E.2d 869, 870 (1992) (defendant has no constitutional right to absent himself from trial in order to preclude in-court identification of him by State’s witnesses).

not have been visible to a jury. 23A C.J.S. Criminal Procedure and Rights of Accused § 1638 (2023) (stun belt is prisoner restraint placed around defendant’s midsection, generally worn so it is not readily visible to jury; when activated it delivers high-voltage electric shock throughout defendant’s body).

The court abused its discretion. *See State v. Hatcher*, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (abuse of discretion occurs when trial court’s conclusions either lack evidentiary support or are controlled by an error of law); *Fontaine v. Peitz*, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987) (“When the trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred.”). There were multiple ways in which the trial court could have used its discretion to fashion an appropriate remedy for these facts. Instead, the court seemingly deferred to courtroom security’s decision to put Appellant in a restraint chair.

Appellant was restrained in front of the jury like a dangerous lunatic. On file with this Court are Court’s Exhibits #4 – 5 (photographs of Appellant in the restraint chair that were published by the media), and Court’s Exhibits #9 – 10 (video footage of him in the device). Appellant’s appearance before the jury in the restraint chair assailed the presumption of innocence. “The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law.” *Coffin v. United States*, 156 U.S. 432, 453 (1895). “Visible shackling undermines the presumption of innocence.” *Deck v. Missouri*, 544 U.S. at 630.

The fact that Appellant appeared mid-trial in the restraint chair was also problematic, as it invited speculation from the jury that Appellant had harmed someone in the courtroom. *See Reese v. State*, Op. 6024 (S.C. Ct. App. filed Sept. 6, 2023) (Howard Adv. Sh. No. 35 at 48)

(shackles could have suggested court was concerned defendant would experience a violent outburst; more problematically, appearance of shackles after opening statements could imply defendant exhibited conduct between opening statements and beginning of testimony that necessitated shackling).

“[S]hackling is “inherently prejudicial.” *Deck*, 544 U.S. at 635 (quoting *Holbrook v. Flynn*, 475 U.S. at 568). “[W]here a court, without adequate justification, orders the defendant to wear shackles that will be seen by the jury, the defendant need not demonstrate actual prejudice to make out a due process violation. The State must prove beyond a reasonable doubt that the shackling error complained of did not contribute to the verdict obtained.” *Deck*, 544 U.S. at 635 (cleaned up). See *State v. Heyward*, Op. No. 28182 (S.C. Sup. Ct. filed Oct. 5, 2023) (Howard Adv. Sh. No. 40 at 11) (error did not require reversal where State conclusively proved defendant’s guilt with other overwhelming evidence such that no other rational conclusion could be reached except that he is guilty of each crime).

This error was explosively prejudicial. The State proceeded on a theory of *Mouzon* malice. The jury struggled with the case; in particular, it struggled with malice. It deliberated for close to four hours, asked for written instructions, and asked if it could convict Appellant of manslaughter. The restraint chair unfairly went to malice by portraying Appellant as a wholly depraved killer who must be tied up and wheeled into the courtroom for the safety of all decent people. *Deck*, 544 U.S. at 635; *Heyward*, Op. No. 28182; U.S. CONST. amend. V; U.S. CONST. amend. XIV.

2.

The trial court erred in requiring Appellant to remain shackled throughout his trial for murdering a police officer, where shackling was not justified by the circumstances, since shackling must be case specific.

The court ruled that Appellant's shackling was justified by his conduct. Appellant had committed no misconduct in the courtroom, and he had not threatened any misconduct. Standby counsel had stepped in as counsel, so any verbal disruptions caused by Appellant's earlier pro se representation had ceased. The court did not balance the competing interests at stake. Shackles were not justified on these facts.

Standard of review

"In criminal cases, the appellate court sits to review errors of law only and is bound by factual findings of the trial court unless an abuse of discretion is shown." *State v. Hawes*, 411 S.C. 188, 190, 767 S.E.2d 707, 708 (2015) (citations omitted). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *State v. Hatcher*, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011). "Whether a defendant is restrained during trial is within the trial judge's discretion. The trial judge is to balance the prejudicial effect of shackling with the considerations of courtroom decorum and security." *State v. Tucker*, 320 S.C. 206, 209, 464 S.E.2d 105, 107 (1995). *See State v. Heyward*, Op. No. 28182 (S.C. Sup. Ct. filed Oct. 5, 2023) (Howard Adv. Sh. No. 40 at 11) (trial court's failure to assess whether shackles were necessary or to ensure the jury could not see them was an abuse of discretion).

Discussion

“Visible shackling undermines the presumption of innocence and the related fairness of the factfinding process.” *Deck v. Missouri*, 544 U.S. 622, 630 (2005). “[S]hackling and prison clothes are unmistakable indications of the need to separate a defendant from the community at large[.]” *Holbrook v. Flynn*, 475 U.S. 560, 568-69 (1986). “The law has long forbidden routine use of visible shackles during [a jury trial]; it permits a State to shackle a criminal defendant only in the presence of a special need.” *Deck*, 544 U.S. at 626. “[G]iven their prejudicial effect, due process does not permit the use of visible restraints if the trial court has not taken account of the circumstances of the particular case.” *Id.*, 544 U.S. at 632.

“[T]he Fifth and Fourteenth Amendments prohibit the use of physical restraints visible to the jury absent a trial court determination, in the exercise of its discretion, that they are justified by a state interest specific to a particular trial.” *Deck*, 544 U.S. at 629. “Such a determination may of course take into account the factors that courts have traditionally relied on in gauging potential security problems and the risk of escape at trial.” *Id.* “[A] judge [may], in the exercise of his or her discretion, [] take account of special circumstances, including security concerns, that may call for shackling. In so doing, it accommodates the important need to protect the courtroom and its occupants. But any such determination must be case specific; that is to say, it should reflect particular concerns, say, special security needs or escape risks, related to the defendant on trial.” *Deck*, 544 U.S. at 633.

“This careful balancing of the competing interests—and articulation of the balancing on the record for the benefit of appellate courts—is necessary to honor the defendant’s due process rights whenever the State seeks to restrain the defendant in the jury’s presence.” *State v. Heyward*, Op. No. 28182 (S.C. Sup. Ct. filed Oct. 5, 2023) (Howard Adv. Sh. No. 40 at 11). “[A]

defendant in a criminal trial may not be required to wear handcuffs, leg shackles, or other restraints in the presence of the jury unless the trial court makes specific findings on the record as to the particular reasons the restraints are necessary. If the court finds restraints are necessary, it must make every reasonable effort to ensure the restraints are not visible to the jury.” *Id.*

Appellant was shackled at the wrists and ankles and chained around his body. *See* Court’s Exhibits # 9 – 10. It was undisputed the shackles were audible to the jury. The trial court erred where it did not balance and articulate the competing interests to determine whether the shackles were necessary. Appellant had not attempted to assault anyone or intimidate the jury. He had not committed *misconduct* that would justify the shackles. Instead, Appellant had been *verbally* disruptive to courtroom decorum prior to his representation by counsel, and he had refused to come out of the holding cell. When counsel made a motion to remove the shackles, Appellant’s pro se verbal disruptions were no longer a problem since he was represented by a lawyer. As counsel stated to the court, Appellant had agreed he would thereafter come out of the holding cell. These restraints were not “case specific.” *Deck v. Missouri*, 544 U.S. at 633.

“[S]hackling is “inherently prejudicial.” *Deck v. Missouri*, 544 U.S. at 635 (quoting *Holbrook v. Flynn*, 475 U.S. at 568). “[W]here a court, without adequate justification, orders the defendant to wear shackles that will be seen by the jury, the defendant need not demonstrate actual prejudice to make out a due process violation. The State must prove beyond a reasonable doubt that the shackling error complained of did not contribute to the verdict obtained.” *Deck*, 544 U.S. at 635 (cleaned up). *See State v. Heyward*, Op. No. 28182 (S.C. Sup. Ct. filed Oct. 5, 2023) (Howard Adv. Sh. No. 40 at 11) (error did not require reversal where State conclusively proved defendant’s guilt with other overwhelming evidence such that no other rational conclusion could be reached except that he is guilty of each crime).

It was undisputed the shackles were audible. The State proceeded on a theory of *Mouzon* malice. The jury struggled with the case. In particular, it struggled with malice. As seen, the jury deliberated for close to four hours and asked if it could convict Appellant of manslaughter. It acquitted Appellant of the traffic offenses. The shackles tainted Appellant with an aura of malice and wickedness. Every time Appellant moved, the jury was reminded that he was too dangerous to be unfettered among others. *Deck*, 544 U.S. at 635; *Heyward*, Op. No. 28182; U.S. CONST. amend. V; U.S. CONST. amend. XIV.

3.

The trial court erred in Appellant’s trial for murdering a police officer, where it failed to exercise any discretion regarding the large number of uniformed officers in the gallery (35 – 40 officers in uniform including tactical gear), since Appellant had the right to a fair trial free from outside influence.

Counsel repeatedly noted the growing number of uniformed officers in the courtroom and proposed several reasonable measures the court could take to balance the interests of Appellant in receiving a fair trial and the audience’s interest in attending a public trial. The court failed to exercise its discretion. It did not take any action to mitigate prejudice to Appellant from the overwhelmingly partisan atmosphere in the courtroom.

Standard of review

“Appellate courts apply the ‘discretion’ standard to review decisions trial courts make on procedural questions . . . , decisions to admit or exclude evidence, and other decisions.” *Morris v. BB&T Corp.*, 438 S.C. 582, 586, 885 S.E.2d 394, 396 (2023).

A trial judge’s decision denying a mistrial will be reversed on appeal if the denial amounts to an abuse of discretion. *State v. Rowlands*, 343 S.C. 454, 458, 539 S.E.2d 717, 719 (Ct. App. 2000). “Although the decision to grant or deny a mistrial is within the sound discretion of the trial court, the appellate court must reverse the ruling if the decision was an abuse of discretion amounting to an error of law. *State v. Dial*, 405 S.C. 247, 257, 746 S.E.2d 495, 500 (Ct. App. 2013) (citing *State v. Wiley*, 387 S.C. 490, 495, 692 S.E.2d 560, 563 (Ct. App. 2010)).

Discussion

“The Sixth and Fourteenth Amendments to the United States Constitution guarantee a defendant a fair trial by a panel of impartial and indifferent jurors.” *State v. Bryant*, 354 S.C.

390, 395, 581 S.E.2d 157, 160 (2003) (citing *Estelle v. Williams*, 425 U.S. 501 (1976); *Irvin v. Dowd*, 366 U.S. 717 (1961)). The South Carolina Constitution likewise provides the rights to trial by an impartial jury and due process of law. S.C. Const. art. I, §§ 3 & 14. “Due process requires that the accused receive a trial by an impartial jury free from outside influences.” *Sheppard v. Maxwell*, 384 U.S. 333, 362 (1966). “[I]t is required that the jury render its verdict free from outside influences of whatever kind and nature.” *Bryant*, 354 S.C. at 395, 581 S.E.2d 160 (quoting *State v. Cameron*, 311 S.C. 204, 207, 428 S.E.2d 10, 12 (Ct. App. 1993)).

In *Holbrook v. Flynn*, 475 U.S. 560, 571 (1986), the United States Supreme Court rejected a habeas corpus challenge to the presence of four uniformed troopers sitting in the front row of the gallery throughout the joint trial of six codefendants, since four troopers for six defendants was “unlikely to have been taken as a sign of anything other than a normal official concern for the safety and order of the proceedings.” “Our 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.*, 475 U.S. at 569 (emphasis added). “To be sure, it is possible that the sight of a security force within the courtroom might under certain conditions ‘create the impression in the minds of the jury that the defendant is dangerous or untrustworthy.’” *Id.*, 475 U.S. at 569 (quoting *Kennedy v. Cardwell*, 487 F.2d 101, 108 (6th Cir. 1973) (*cert. denied*, 416 U.S. 959 (1974))). See *McCloskey v. Boslow*, 349 F.2d 119, 121 (4th Cir. 1965) (presence of armed guards in courtroom may reach a point where trial is a farce and a fair trial is impossible) (quoting *Odell v. Hudspeth*, 189 F.2d 300, 302 (10th Cir. 1951) (*cert. denied* 342 U.S. 873 (1951))).

“Trials should be conducted in an atmosphere of impartiality; the jury should be allowed to weigh the evidence without feeling the terror of impending doom if they acquit the defendant.

When a judge conducts a trial in a way that can only impress upon the jury the dangerousness of the men on trial, this impartial search for truth aborts.” *Dorman v. United States*, 435 F.2d 385, 396–98 (D.C. Cir. 1970). “Any judge who has sat with juries knows that, in spite of forms they are extremely likely to be impregnated by the enviroing atmosphere.” *Turner v. Louisiana*, 379 U.S. 466, 472 (1965) (quoting *Frank v. Mangum*, 237 U.S. 309, 349 (1915) (Holmes, J., dissenting)).

The trial court erroneously permitted the atmosphere in the courtroom to impress upon the jury that Appellant was dangerous, which posed an unacceptable risk of prejudice. Counsel repeatedly brought the large and growing numbers of uniformed officers to the court’s attention. Neither the court nor the prosecutor disagreed with counsel’s estimates of the number of uniformed officers present, or disagreed that some were in tactical gear. The court took no action to avert prejudice, such as requiring audience members to wear plainclothes or attend the trial in a virtual courtroom. Absent such measures, the court should have declared a mistrial. *State v. Rowlands*, 343 S.C. at 457-58, 539 S.E.2d at 719 (mistrial inquiry must be made in the context of the specific difficulty facing the trial judge); *State v. Makins*, 433 S.C. 494, 500, 860 S.E.2d 666, 670 (2021) (mistrial is serious and extreme measure taken when the prejudice cannot be removed in any other way). The large and armed law enforcement presence in the courtroom deprived Appellant of a fair trial: the courtroom was no longer a suitable place for an impartial search for the truth. *Holbrook v. Flynn*, 475 U.S. at 572; US. CONST. amend. VI; US. CONST. amend. XIV; S.C. Const. art. I, §§ 3 & 14.

The jury struggled with the case. It deliberated for nearly four hours, and asked whether it could convict Appellant of manslaughter in a *Mouzon* malice case. The atmosphere was already poisonous due to the jury seeing Appellant tied down in a restraint chair and hearing him chained

and shackled. A phalanx of uniformed police officers in the courtroom likewise portrayed Appellant as a vicious killer. The error requires reversal. *See State v. Johnson*, 422 S.C. 439, 458, 812 S.E.2d 739, 749 (Ct. App. 2018) (circuit court did not err in denying mistrial motion where defendant brought into the courthouse in handcuffs and surrounded by police personnel; record failed to demonstrate any juror observed this activity); *State v. Cameron*, 311 S.C. at 208, 428 S.E.2d at 12 (reversal required due to private communication between court official and jury, since it did not clearly appear the subject matter of the communication was harmless and could not have affected the verdict).

4.

The trial court erred in admitting repeated depictions (video, audio, and photographic) of the fatal crash and its aftermath, where the probative value of the cumulative evidence was substantially outweighed by the danger of unfair prejudice, since the evidence should have been excluded pursuant to Rule 403, SCORE.

The circumstances of Decedent's killing were amply depicted by testimony and by previously admitted video footage. The cumulative presentation of additional evidence of Decedent being hit by the truck and slowly dying in the road occasioned unfair prejudice. The evidence should have been excluded pursuant to Rule 403, SCORE.

Standard of review

The admission of evidence is within the circuit court's discretion and will not be reversed on appeal absent an abuse of that discretion." *State v. Dickerson*, 395 S.C. 101, 116, 716 S.E.2d 895, 903 (2011). "A trial court has particularly wide discretion in ruling on Rule 403 objections." *State v. Lee*, 399 S.C. 521, 527, 732 S.E.2d 225, 228 (Ct. App. 2012); *see also State v. Dial*, 405 S.C. 247, 260, 746 S.E.2d 495, 502 (Ct. App. 2013) ("A trial judge's decision regarding the comparative probative value and prejudicial effect of relevant evidence should be reversed only in exceptional circumstances." (citation omitted)).

Discussion

"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCORE. "Unfair prejudice means an undue tendency to suggest decision on an improper basis, such as an emotional one." *State v. Saltz*, 346 S.C. 114, 127, 551 S.E.2d 240,

247 (2001). “The determination of whether the danger of unfair prejudice outweighs the probative value of evidence must be based on the entire record and will turn on the facts of each case.” *State v. Holland*, 385 S.C. 159, 171, 682 S.E.2d 898, 904 (Ct. App. 2009) (quoting *State v. Lyles*, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008)).

“Photographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are not necessary to substantiate material facts or conditions.” *State v. Lee*, 399 S.C. 521, 528, 732 S.E.2d 225, 228 (Ct. App. 2012) (cleaned up). See *State v. Middleton*, 288 S.C. 21, 24, 339 S.E.2d 692, 693 (1986) (testimony of the forensic pathologist negated any arguable evidentiary value of autopsy photographs); *State v. Kornahrens*, 290 S.C. 281, 288–89, 350 S.E.2d 180, 185 (1986) (in guilt phase of a trial, photographs of murder victims should be excluded where facts they are intended to show have been fully established by competent testimony); *State v. Hess*, 279 S.C. 14, 18, 301 S.E.2d 547, 549–50 (1983) (limitation of defense testimony upheld where it was merely cumulative to other testimony).

Footage from Deputies Wasserman and Harrison was admitted without objection. Numerous witnesses testified about the crash, including a highway patrol officer qualified as an expert in accident reconstruction. The circumstances were fully established by other competent evidence. The repeated admission and publication of cumulative evidence, State’s Exhibits #7 (video footage), #8 (video footage and audio recording), #9 (audio recording), and #26 (photograph), was error. State’s Exhibit #8 is particularly ghastly—slowed-down video footage of Decedent being dragged across the interstate after he was fatally hit by traffic. Repeated depictions of Decedent’s needless death in the line of duty, and the reactions of the other officers in the moment, were likely to arouse the sympathy and prejudice of the jury. The evidence should have been excluded. Rule 403, SCRE.

This error was reversible. As seen, the jury struggled with the case, and it particularly struggled with malice. The repeated publication of Decedent's tragic death could have unfairly tipped the scales for conviction. *See Middleton*, 288 S.C. at 25, 339 S.E.2d at 694 (reversal based in part upon gruesome autopsy photographs); *State v. Nelson*, 440 S.C. 413, 426, 891 S.E.2d 508, 514 (2023) (reversal where gruesome autopsy photos unnecessarily created the potential for the jury to convict based on inflamed emotions).

5.

The trial court erred in admitting evidence pertaining to a blood draw purportedly of Appellant's blood, which was taken for medical purposes and demanded by law enforcement for prosecution purposes, where the chain of custody was wholly inadequate, since the State must establish a chain of custody as far as practicable.

The court admitted blood and DNA evidence in error, since the State did not establish the identity of the person who drew the blood. Also, the blood vials were labeled “TR 2020 Montana 078,” which was a “trauma name” instead of a first name and surname. The State failed to establish the identity of any hospital personnel who labeled the blood and could confirm that Appellant was “TR 2020 Montana 078.”

Standard of review

“The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion.” *State v. Hatcher*, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (quoting *State v. Sweet*, 374 S.C. 1, 6, 647 S.E.2d 202, 205 (2007)). “In criminal cases, the appellate court sits to review errors of law only.” *State v. Pulley*, 423 S.C. 371, 815 S.E.2d 461 (2018) (quoting *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006)). The appellate court “is bound by the trial court’s factual findings unless they are clearly erroneous.” *Id.* (quoting *Baccus*, 367 S.C. at 48, 625 S.E.2d at 220)).

Discussion

“The State must prove a chain of custody for a blood sample from the time it is drawn until it is tested.” *State v. Carter*, 344 S.C. 419, 424, 544 S.E.2d 835, 837 (2001). “This Court has long held that a party offering into evidence fungible items such as drugs or blood samples must establish a complete chain of custody as far as practicable.” *State v. Hatcher*, 392 S.C. 86,

91, 708 S.E.2d 750, 753 (2011) (cleaned up). “Where an analyzed substance has passed through several hands, the identity of individuals who acquired the evidence and what was done with the evidence between the taking and the analysis must not be left to conjecture.” *State v. Sweet*, 374 S.C. 1, 6, 647 S.E.2d 202, 205 (2007).

“Testimony from each custodian of fungible evidence, however, is not a prerequisite to establishing a chain of custody sufficient for admissibility. Where other evidence establishes the identity of those who have handled the evidence and reasonably demonstrates the manner of handling of the evidence, our courts have been willing to fill gaps in the chain of custody due to an absent witness.” *Sweet*, 374 S.C. at 7, 647 S.E.2d at 206 (cleaned up). “[W]e have found evidence inadmissible only where there is a missing link in the chain of possession because the identity of those who handled the blood was not established at least as far as practicable.” *State v. Carter*, 344 S.C. at 424, 544 S.E.2d at 837.

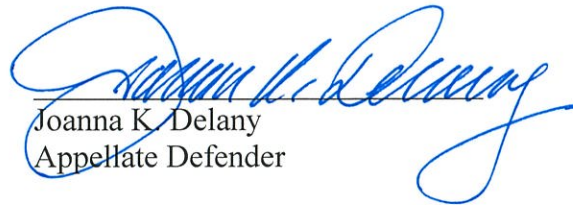
In *State v. Williams*, 301 S.C. 369, 370, 392 S.E.2d 181, 182 (1990), the Supreme Court held the State failed to sufficiently establish the chain of custody of the defendant’s blood test where no one present in the emergency room could identify who sealed and labeled the blood with the defendant’s patient number, who transported it to the laboratory, and the defendant’s emergency room record was originally mislabeled. These breakdowns cumulatively rendered the chain of custody fatally defective. *See State v. Pulley*, 423 S.C. 371, 378–79, 815 S.E.2d 461, 465 (2018) (chain of custody was not established as far as practicable where testimony on who handled the cocaine amounted to conjecture); *S.C. Dep’t of Soc. Servs. v. Cochran*, 364 S.C. 621, 628-29, 614 S.E.2d 642, 646 (2005) (Chain was not fatally defective where phlebotomist who drew the blood was identified and signed the chain of custody form, and the only person not

identified in the chain was the courier who transported the samples. The person who received the samples signed off that the seals were intact upon receipt after transport.).

The trial court reversibly erred by admitting the blood and the DNA evidence, given the State's failure to establish the identity of the persons who drew and labeled the blood, and could confirm Appellant's blood was labeled with the "Montana" identifier. The evidence was used to prove Appellant's guilt in the drug trafficking offense and the weapons offense. *State v. Pulley*, 423 S.C. at 380, 815 S.E.2d at 465–66 (James, J., concurring) (State "must satisfactorily establish the chain of custody of evidence passing from hand to hand to hand"); *State v. Sweet*, 374 S.C. at 5, 647 S.E.2d at 205 (court committed reversible error by admitting evidence of drugs purchased by unknown confidential informant because chain of custody was defective); *State v. Carter*, 344 S.C. at 424, 544 S.E.2d at 837 (blood evidence properly admitted where no missing link in the chain of custody).

CONCLUSION

Based on the foregoing arguments, Appellant respectfully requests this Court reverse his convictions and sentences and remand for a new trial.



Joanna K. Delany
Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of August, 2024.

Aug 01 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

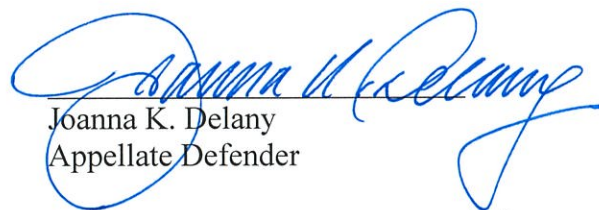
RAY L. KELLY,

APPELLANT

APPELLATE CASE NO. 2022-001449

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Appellant in the above-referenced case has been served upon W. Joseph Maye, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 1st day of August, 2024.



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RECEIVED**Aug 01 2024****SC Court of Appeals**

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
The Honorable Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

RAY L. KELLY,

APPELLANT.

Appellate Case No. 2022-001449

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ATTORNEYS FOR RESPONDENT

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APPELLANT'S ISSUE PRESENTED

1. Whether the trial court erred in forcing Appellant, who was on trial for murdering a police officer, to appear before the jury in a restraint chair, where the restraint chair was not justified by the circumstances, since restraints must be case specific?
2. Whether the trial court erred in requiring Appellant to remain shackled throughout his trial for murdering a police officer, where shackling was not justified by the circumstances, since shackling must be case specific?
3. Whether the trial court erred in Appellant's trial for murdering a police officer, where it failed to exercise any discretion regarding the large number of uniformed officers in the gallery (35-40 officers in uniform including tactical gear), since Appellant had the right to a fair trial free from outside influence?
4. Whether the trial court erred in admitting repeated depictions (video, audio, and photographic) of the fatal crash and its aftermath, where the probative value of the cumulative evidence was substantially outweighed by the danger of unfair prejudice, since the evidence should have been excluded pursuant to Rule 403, SCORE?
5. Whether the trial court erred in admitting evidence pertaining to a blood draw purportedly of Appellant's blood, which was taken for medical purposes and demanded by law enforcement for prosecution purposes, where the chain of custody was wholly inadequate, since the State must establish a chain of custody as far as practicable?

STATEMENT OF THE CASE

The Crime

Ray L. Kelly (hereinafter “Appellant”) was indicted for murder, trafficking cocaine (between 28 and 100 grams), possession of a weapon during commission of a violent crime, three counts of resisting arrest with assault of a police officer, providing false information, driving without a license, following too closely on a public highway, and speeding. (2020-GS-23-6551; 6536; 6552; 6541; 5006A; 6550; 6548; 6547; and 6557). Appellant proceeded to a jury trial before the Honorable Judge Edward W. Miller on September 26, 2022, through September 29, 2022. Appellant initially chose to proceed *pro se*. However, prior to cross examination of the State’s first witness he changed his mind and previously assigned standby counsel, Mindy H. Lipinski, Esq., was appointed to represent Appellant. The State was represented by Solicitor W. Walter Wilkins, III, and Assistant Solicitor Grace B. Moroney of the 13th Judicial Circuit.

At the conclusion of the trial Appellant was found guilty on all charges except for following too closely and speeding. (R. p. 686-687). Judge Miller sentenced Appellant to a life sentence for the murder conviction, 10 years for each resisting arrest with assault conviction, 30 years for trafficking cocaine base 28-100 grams third offense, and 5 years for possession of a weapon during commission of a violent crime. (R. p. 697). This appeal now follows.

STATEMENT OF FACTS

On October 20, 2020, Officer Jesse Wasserman was in his patrol car monitoring I-85 as part of the criminal interdiction unit for Greenville County Sheriff’s Office. That evening he was accompanied by team members Sergeant Conley Jumper¹ (hereinafter Victim Jumper), Officer

¹ Conley Jumper was a Master Deputy at the time of the crimes, but was posthumously promoted to Sergeant.

David Harrison, and Officer Nick Ledbetter; each officer had their own vehicle that afternoon. (R. p. 140-41). Officer Wasserman had just completed a stop on I-85 southbound and was in the process of returning to the northbound side of the interstate when he witnessed a vehicle clearly driving above the speed limit and following too closely behind another vehicle. Officer Wasserman turned on his blue lights (which triggers the recording of his body and car cameras), pursued the vehicle, and initiated a traffic stop of a blue Nissan Altima.² Officer Wasserman testified that prior to the stop the vehicle was traveling at a speed of 84 miles per hour and only two car lengths away from the vehicle in front of it. (R. p. 142-43; p. 144; p. 148-49).

Appellant complied with the stop by pulling to the right-side emergency lane, but as Officer Wasserman testified, he did so very shallowly, leaving very little room between oncoming traffic and the vehicle. Officer Wasserman conducted the stop on the passenger side of the car and immediately noticed an overwhelming smell of marijuana coming from the car. Appellant did not have a driver's license and was accompanied by a female passenger later determined to be Tornell Laureano. Officer Wasserman asked Appellant to step out of the vehicle to speak with him. Appellant did so but lied to officer Wasserman by giving him a fake name of "John Arthur Kelly." (R. p. 150-53). Officer Wasserman testified that he knew he would be conducting a search of the vehicle before the stop was over, with the smell of marijuana establishing probable cause. He also testified that he looked up the provided name by Appellant, but the physical traits from records associated with that name did not match Appellant's appearance. Officer Wasserman called for backup during this stop. (R. p. 154-55).

Officer Ledbetter responded as backup and maintained a conversation with Appellant while Officer Wasserman continued his investigative efforts in the patrol car. Victim Jumper also

² The vehicle was a rental.

responded to this call for backup shortly thereafter. When officer Wasserman returned he asked Appellant if he had let someone smoke weed in the car. Appellant denied doing so and denied that there was any weed in the car. Officer Wasserman then performed a pat-down of Appellant for weapons and explained that they would be searching the vehicle due to the presence of marijuana odor. Appellant began to walk back toward his vehicle, away from the officers, and Officer Wasserman responded by grabbing Appellant's forearm to prevent his departure and stating that Appellant was not going anywhere. Video evidence demonstrates that this effort was not violent in nature; however, Appellant immediately resisted, attempted to push the officer away, and flee to the driver's side of his vehicle. Officer Wasserman and Appellant engaged in a struggle. Officer Ledbetter and Victim Jumper came to assist in detaining Appellant who had reached the driver side of his vehicle, mere inches away from the active interstate traffic lane.³ Appellant was also verbally made aware that he was under arrest at this time, but he continued to resist. (R. p. 157-163); (State's Exhibit 3, at 9:30-10:45).

The officers were unsuccessful in their efforts to subdue Appellant and he managed to get back into his driver seat with Victim Jumper on top of him still trying to detain him. With Victim Jumper standing on the emergency lane but leaning into the vehicle, Appellant got his vehicle into gear and pressed the gas pedal causing the car to drive across oncoming traffic. A semi-truck in the middle lane then slammed into the driver's side of the Nissan while Victim Jumper was being partially drug across the roadway. Appellant then continued driving across the lanes of traffic into the third lane, where responding Officer Harrison was driving in an effort to respond to the call for

³ Officer Wasserman testified that due to the location of the altercation, it was too dangerous to try and take Appellant to the ground to subdue him, as it might result in a fall into oncoming traffic. Officer Wasserman tore a tendon in his hand as a result of the altercation with Appellant. (R. p. 162-163). Officer Ledbetter testified that during the struggle Appellant had grabbed the collar of his shirt and was essentially strangling him in doing so. (R. p. 248; p. 250-251).

backup. Approximately nine seconds after the first collision, Appellant's actions caused a second collision with Officer Harrison's patrol car which led to Appellant being thrown from his vehicle.⁴ Appellant continued to resist once the collisions were over, but he was ultimately apprehended and cuffed soon after. (R. p. 163-166; p. 252-254); (State's Exhibit 3, at 10:45-11:13); (State's Exhibit 8, at 00:57-1:23). While in the back of the patrol car, Appellant can be heard stating: "Shit, they're going to try me for trying to kill a cop." (R. p. 619; State's Exhibit 13, at 18:39-18:42).

Officer John James, deputy medic with the Greenville County Sheriff's Office, responded to Victim Jumper. He testified that Victim Jumper was alert and able to respond to questions, but was in severe pain. He accompanied Victim Jumper into the ambulance, but Victim Jumper ultimately went into traumatic cardiac arrest and died from his injuries. (R. p. 335-341). Dr. Michael Ward conducted Victim Jumper's autopsy. He testified that Victim Jumper suffered multiple blunt force injuries to his right hip, buttocks, pelvis, left hip, and lower back which caused fractures and extensive internal bleeding. Victim ultimately died from these injuries. Dr. Ward also opined that the injuries were sustained as a result of the first collision. He testified that Victim Jumper sustained no injuries that were above his belly button and the injuries sustained were consistent with an impact by the broad front of a truck, as opposed to the narrow front of Officer Harrison's sedan. (R. p. 347-351). Sargeant David Andis, of the Multidisciplinary Accident Investigation Team, performed an accident reconstruction. He testified that Victim Jumper appeared to fall from Appellant's vehicle just prior to the second collision, and he could find no evidence that Officer Harrison's vehicle struck Victim Jumper. (R. p. 356; p. 370; p. 379; p. 400).

⁴ Much of Appellant's defense attempted to challenge the proximate cause of Jumper's death by suggesting that it was Officer Harrison's vehicle that struck Victim Jumper, and that Officer Harrison was driving too fast under the circumstances. This also put considerable focus upon Jumper's location at the time of the second collision and Jumper's location after the accidents took place.

The investigation of the case also led to the following evidence. Appellant's passenger, Tornell Laureano, had a purse which contained Appellant's New York State identification card (not a driver's license), approximately \$3,145 cash, a green leafy plant-like material, rolling papers, and a lighter. (R. p. 426-429; p. 486; p. 527). Law enforcement officers found inside the trunk of the vehicle a Springfield pistol firearm box containing a Glock 23 handgun containing Petitioner's DNA on the grip and slide, a magazine with unfired cartridges, and a box of ammunition with 25 unfired cartridges.⁵ (R. p. 434; p. 526-527; p. 575-576). Police also found multiple cellphones, hashish marijuana, and 55.30 grams of crack cocaine. (R. p. 436-437; p. 439; p. 542-543; p. 551-552).

STANDARD OF REVIEW

The law "permits a judge, in the exercise of his or her discretion, to take account of special circumstances, including security concerns, that may call for shackling of a defendant during trial." *Deck v. Missouri*, 544 U.S. 622, 633, 125 S. Ct. 2007, 2015, 161 L. Ed. 2d 953 (2005). Likewise, "[t]he admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). "A trial court has particularly wide discretion in ruling on Rule 403 objections." *State v. Lee*, 399 S.C. 521, 527, 732 S.E.2d 225, 228 (Ct. App. 2012). "A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances." *State v. Collins*, 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014) (quoting *State v. Adams*, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003)). An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions,

⁵ The DNA testimony was presented by way of likelihood ratio of 28 Quadrillion in comparison to the known standard acquired from Appellant's dried blood swabs from clothing. (R. p. 573; p. 575-576).

is without evidentiary support. *State v. Pittman*, 373 S.C. 527, 570, 647 S.E.2d 144, 166–67 (2007) (citing *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000)).

ARGUMENT

I. The trial court did not abuse its discretion in finding that the restraint chair was necessary given Appellant’s behavior in court and his altercation with police officers following his refusal to leave his cell to attend trial.

Issue as it was presented at trial

The concern for Appellant’s disruptive behavior was immediately apparent, as Appellant was disruptive and nonresponsive during the Honorable Letitia H. Verdin’s pretrial hearing on February 16, 2021. The hearing was necessary because Appellant had refused to come before the video monitor on December 11, 2020, to receive his *Faretta* warnings. An in-person hearing during the covid pandemic had to be held just to effectively inform Appellant of his constitutional rights. (Feb 16, 2021, hearing, R. p. 1; p. 3-7). Even for this limited purpose, Appellant was so bizarrely disruptive, nonsensical, and obstinate in refusing to answer the court’s simple questions that it raised concerns of his competency to stand trial. The only point Appellant was effective in conveying was his desire not to have counsel appointed, which the court could not effectuate until competency was confirmed. Judge Verdin therein ordered that Appellant undergo a mental health examination. (Feb 16, 2021, hearing, R. p. 7-10). The matter was reconvened following a motion from the Department of Mental Health, noting that they could not conduct their mental health examination without Appellant first having counsel assigned. (Mar 16, 2021, hearing, R. p. 12; p. 14-15). Judge Verdin endeavored to assign counsel for the limited purpose of conducting a mental health evaluation. Appellant was addressed just once while the State and public defender addressed the legalities and logistics of the arrangement, and he was again nonresponsive. (Mar 16, 2021, hearing, R. p. 15-23; p. 15-16).

A third hearing was convened on May 13, 2021. The record shows that Appellant cooperated with the evaluation, the court found Appellant to be competent to stand trial, and the court proceeded to readdress whether Appellant wished to have counsel assigned or proceed *pro se*. (May 13, 2021, hearing, R. p. 24; p. 26). The public defender assigned to Appellant for the evaluation was relieved, but Appellant was again uncooperative with the court proceedings, repeatedly refusing and objecting to all proceedings while also asserting other nonsensical claims. The court warned Appellant that whatever purpose he had for his behavior, it would not slow down the legal process going forward. (May 13, 2021, hearing, R. p. 27-29; p. 29).

A fourth hearing was convened before the Honorable Edward W. Miller on November 16, 2021, primarily to explain the pre-trial roster system to Appellant as a *pro se* defendant, ensure discovery had been received, and reissue Appellant's *Faretta* warnings given his bizarre behavior in prior proceedings. (Nov 16, 2021, hearing, R. p. 30; p. 32). To proactively avoid unnecessary continuances, the Solicitor also informed the court that in speaking with New York state prosecutors, Appellant has a history of insisting on proceeding *pro se*, only to change his mind and demand an attorney in an effort to delay proceedings. The Solicitor suggested that the appointment of standby counsel may be needed to avoid such concerns. (Nov 16, 2021, hearing, R. p. 33). Following the reissued *Faretta* warnings, Appellant again claimed to not understand the proceedings, was again uncooperative in his responses to the court's questioning, and asserted the same vacuous declarations. This particular exchange with the court was longer and even more confrontational than his previous efforts. (Nov 16, 2021, hearing, R. p. 37-43; p. 46-49). Ultimately, Judge Miller chose to assign standby counsel (which Appellant objected to) and have Appellant informed of the approximate timeframe that his case would be called to trial.

On June 27, 2022, a fifth pretrial hearing was held. Ms. Gorton, asked to be substituted as standby counsel due to a scheduling conflict. She also articulated that Appellant had refused to meet with her and discuss the case. Appellant's response was to deny having any counsel and behave as he had in prior hearings. Judge Miller granted Ms. Gorton's request and substituted Ms. Lipinski as standby counsel for Appellant. (June 27, 2022, hearing, R. p. 50; p. 52-59).

Appellant's jury trial commenced on September 26, 2022, before Judge Miller. Final pretrial matters were addressed, and Appellant began with his usual behavior. The trial court noted for the record that *Appellant had been offered access to regular clothing in lieu of prison attire but had refused such.* (R. p. 70-72). Ms. Lipinski addressed the court to note that she had made multiple efforts to meet with Appellant, and was minimally successful, but in her most recent efforts he again refused to speak with her or her investigator. (R. p. 73). Appellant continued his disruptive efforts via unnecessary objections and repetitive assertions. (R. p. 74-76). Thereafter, the trial court explicitly warned Appellant that there would be repercussions if he continued to interrupt and behave in his usual manner. (R. p. 76).

Appellant continued to interrupt with unnecessary objections.⁶ (R. p. 77-87). The trial court then issued the following warning to Appellant:

Mr. Kelly, as you are aware, if you misbehave in the court, the State has the capacity to implement a process that would – you probably don't want to get involved in. And I already – I understand that you have said that you're not going to cooperate with a stun belt, which at this juncture because you've offered no reasons to use it, we're not going to implement. But it is available. And should things get out of hand, we will ensure that the propriety of the courtroom is maintained. And if that includes putting a stun belt on you, that's what will happen.

⁶ Appellant was read his *Faretta* warnings a third time during this portion of the trial.

(R. p. 88). After which, the State proactively raised concerns regarding Appellant's decision not change out of his prison attire, and that he was during pretrial matters still in handcuffs. The court noted that it would remove his handcuffs, provide him pen and paper, and that he would instruct the jury regarding the Appellant's clothing and leg shackles, in anticipation of Appellant addressing the jury for an opening statement. Appellant did not offer any proper substantive response to these arrangements; he instead only noted his objection to the trial and his intention not to participate. (R. p. 89). The trial court then took a break in anticipation of striking a jury.

When the parties returned, Appellant claimed that he had been physically assaulted by multiple people in the courtroom⁷ and reiterated his various assertions and his lack of consent to the trial going forward. (R. p. 90). Though the officers did not address the court, the circumstances provided the court with an inferential first instance of physical confrontation and noncooperation by Appellant.

What followed next was five consecutive interruptions of the court by Appellant. (R. p. 90-91). In response, the trial court issued the following warning: "I want to tell you what could happen if you misbehave. The United States Supreme Court would allow you to be bound and gagged in the courtroom. So just keep that in mind. And there are other measures that could be taken, including a stun – stun bracelet or anklet." Appellant's behavior continued for another seven pages of transcribed dialogue. (R. p. 91-98).

The jury entered, the indictments were read, and the *voir dire* and selection process began. Appellant chose not to speak or introduce himself. (R. p. 98-102). When the opportunity to seat or strike individual potential jurors began, Appellant would briefly reiterate his usual nonresponsive

⁷ The record is not clear, but it can be inferred that he was referencing law enforcement officers responsible for his transportation to and from the courtroom.

assertions, wherein he objects to the proceedings or challenges the jurisdiction of the court. (R. p. 112-123). Ultimately, a jury was selected, and the court then recessed for lunch.

Upon returning from lunch, though not responsive to the court's question regarding discovery, Appellant informed the court that he was not at trial willingly, that he was handcuffed, shackled, tied to a chair, and insulted. Thereafter, the court took official notice of the developments concerning Appellant's restraint chair. The following dialogue transpired:

THE COURT: There's been a new development with Mr. Kelly. I see he's in a special chair; is that correct?

THE SLED OFFICER: Yes, sir.

THE COURT: All right. And for the record, the reason for that.

THE SLED OFFICER: Your Honor, it was when – he refused to come out of his cell. And then when we went to assist him in standing, it was active resistance towards us at that point in time. So he was placed in the chair and brought to the courtroom.

THE COURT: Okay.

DEFENDANT KELLY: I object. That's a lie. I was physically assaulted.

THE COURT: Okay.

DEFENDANT KELLY: It's on camera.

THE COURT: All right. Well, let me – Mr. Kelly, we're just doing our best to accommodate you.

DEFENDANT KELLY: I don't want any accommodations.

THE COURT: Okay.

DEFENDANT KELLY: I don't want any participation in this circus.

THE COURT: All right. Well, this is your day in court, so to speak.

...

Just for the record, I want to make a finding that the Defendant has been disruptive. And that because of that behavior, pursuant to the guidelines, as I understand them from the United States Supreme Court laid out in *Illinois vs. Allen*, I approve the use of this restraint chair.

(R. p. 132-135). The trial proceeded and the State completed its direct examination of Officer Wasserman. At Appellant's request, the court recessed to allow Appellant time to confer with standby counsel, after which he chose to allow Ms. Lipinski to take over his defense. In the process of reaching this decision Appellant was permitted to get out of the chair. Upon return the restraint

chair was removed and Appellant was granted a second chance to behave by way of reduced and nonvisible restraints. Appellant's left hand was freed for writing, while his right hand, belly, and legs remained in shackling not visible to the jury. (R. p. 166-168; p. 194)

Discussion

The trial court did not abuse its discretion in finding that the restraint chair was a necessary measure to ensure security and decorum in light of Appellant's prior behavior. Appellant's bizarre and disruptive verbal behavior over the course of multiple pretrial hearings, which ultimately escalated into physical confrontation and resistance to officers when it was time to proceed to court, was sufficient to support the trial court's decision. The trial court set forth on the record that pursuant to *Illinois v. Allen*, Appellant's behavior was the reason for the restraint chair's use at the outset of trial. As such, the court made a ruling based on the facts and circumstances that had been presented and its ruling was in keeping with the holdings of *Illinois v. Allen* and *Deck v. Missouri*.

The prohibitions against visible shackling are primarily set forth in two cases: *Illinois v. Allen* and *Deck v. Missouri*. The Supreme Court in *Illinois v. Allen* held that:

[i]t is essential to the proper administration of criminal justice that dignity, order, and decorum be the hallmarks of all court proceedings in our country. The flagrant disregard in the courtroom of elementary standards of proper conduct should not and cannot be tolerated. We believe trial judges confronted with disruptive, contumacious, stubbornly defiant defendants must be given sufficient discretion to meet the circumstances of each case. No one formula for maintaining the appropriate courtroom atmosphere will be best in all situations. We think there are at least three constitutionally permissible ways for a trial judge to handle an obstreperous defendant like Allen: (1) bind and gag him, thereby keeping him present; (2) cite him for contempt; (3) take him out of the courtroom until he promises to conduct himself properly.

Illinois v. Allen, 397 U.S. 337, 343–44, 90 S. Ct. 1057, 1061, 25 L. Ed. 2d 353 (1970). In 2005, the Supreme Court in *Deck v. Missouri* harkened back to its holding in *Allen* and elaborated that the State’s use of visible shackles are only permissible if there is set forth some articulation of special need, such as physical security, escape prevention, or courtroom decorum. *Deck v. Missouri*, 544 U.S. 622, 626–28, 125 S. Ct. 2007, 2010 (2005). The determination of the special need is made at the discretion of the trial court. *Id.* at 629. *State v. Heyward*, 441 S.C. 484, 493, 895 S.E.2d 658, 663 (2023) (quoting *United States v. Samuel*, 431 F.2d 610 (4th Cir. 1970)) (“Whenever unusual visible security measures in jury cases are to be employed, we will require the district judge to state for the record, out of the presence of the jury, the reasons therefor and give counsel an opportunity to comment thereon, as well as to persuade him that such measures are unnecessary.”). Any error on the part of the trial court only requires reversal if the State cannot prove beyond a reasonable doubt that the shackling error complained of “did not contribute to the verdict obtained.” *Id.*, 505–06.

As an initial matter, Respondent would argue that this claim is not preserved for appellate review. Under *Deck*, a court that permits the use of visible shackles *without* setting forth its reasoning and justification would likely constitute a *per se* violation of due process preserved for appellate review regardless of whether objection was raised. *Id.* However, once a court sets forth its reasoning for exercising discretion and permitting shackling, as the trial court did here, the finding must be objected to by the complaining party. Here, the record set forth Appellant’s behavior and the trial court articulated its reasoning in reliance upon that behavior, but there was no subsequent objection by Appellant, nor any articulation by Appellant that he was concerned the jury would see him in the restraint chair. Thus, there is no basis for which the finding of the trial court was challenged. In the absence of an objection, this claim is not preserved for appellate

review. See *State v. Heyward*, 441 S.C. 484, 493, 895 S.E.2d 658, 663 (2023); *Ryals v. State*, 439 S.C. 230, 237, 886 S.E.2d 239, 243 (Ct. App. 2023).

In arguendo, if the claim is preserved, the record demonstrates that the trial court abided the requirements of controlling precedent under *Allen* and *Deck*. The record demonstrates the extensive and persistent poor behavior by Appellant in the form of verbal interruptions of the court and reiterated nonsensical objections. Though it chose not to seek further details at the time, by inference from Appellant's first claim of physical assault (R. p. 90), the trial court was also made aware that Appellant may not be entirely cooperative with the law enforcement officer's tasked with his transport. The court also issued two separate verbal warnings that continued misbehavior would lead to physical restraint consequences. Finally, and only after police officers had to utilize a restraint chair just to get Appellant into the courtroom, did Judge Miller exercise discretion in permitting visible shackling. Under the circumstances, the court's finding of the necessity of the restraint chair during trial comes from the very fact that police needed such measures just to subdue and transport Appellant.

In essence, the court bent over backwards to avoid such measures, but could not countenance physical resistance and further disruption. In accordance with *Deck* the court requested the SLED officer state for the record why the restraints were needed and then put its findings on the record that the restraint chair was warranted in light of the totality of Appellant's behavior to that point. There is no abuse of discretion in the court's decision, and moreover, it is clear from the record that the trial court continued to exercise discretion by permitting the restraining chair to be later removed in favor of less restrictive measures once standby counsel took over his defense.

Appellant's arguments to the contrary ring hollow and fail to fully respect the fact that Appellant's lack of cooperation turned into physical resistance of law enforcement personnel shortly before court was set to reconvene. In transporting such a defendant into court, *and in needing a restraint chair to do so*, it is axiomatic that the defendant had created a potential security risk. Appellant's disruptive behavior was purposeful, persistent, abhorrent, and ultimately physically confrontational in the context of courtroom decorum. Contrary to Appellant's arguments, disruptive circumstances need not match the precise vile or abusive language that defendant Allen displayed in order for *Allen* remedies to be appropriately implemented. It is, as articulated by *Deck*, a matter of the court's discretion and Appellant has failed to identify an abuse of that discretion during his trial.

Instead, Appellant has suggested that the trial court should have exercised its discretion *differently* by exploring other alternatives. Appellant even suggests that gagging or overriding Appellant's constitutional right to self-representation by proceeding with a trial in absentia would have been more appropriate – such forms of relief would almost certainly have *also* been challenged on appeal by Appellant. Appellant then argues that a stun belt would have been a less prejudicial means of restraint. However, the record demonstrates Appellant had already made it clear that he would not cooperate with the use of such a device. (R. p. 88). The fact that Appellant capitulates to the consideration of other options at all is a demonstration of the weakness of its argument that the court was not within its discretion to act upon Appellant's behavior. Appellant presented the court with repeated disruptions and legitimate concern over physical resistance and the court found physical restraint an appropriate measure.

Appellant's claims of prejudice likewise strain the bounds of reason. The concern for unfair prejudice that arises from unnecessary visible shackling is that the jury would find it an

“unmistakable indication[] of the need to separate a defendant from the community at large” such that the jury may perceive the defendant as “particularly dangerous or culpable”. *Holbrook v. Flynn*, 475 U.S. 560, 569, 106 S. Ct. 1340, 1346, 89 L. Ed. 2d 525 (1986). However, that is the same exact concern that arises from wearing prison attire in the presence of the jury. *Id.* Here, however, Appellant had already voluntarily subjected himself to such risks by refusing to change out of his prison attire in the presence of the jury, and he chose to do so *throughout his entire trial*. (R. p. 466). In the context of prejudice, since the jury had already seen Appellant in his prison clothing, *also* seeing him in shackling would be ultimately unimpactful. Such would not have contributed to the verdict, especially in light of the evidence presented in this case. Collectively, the lack of prejudice demonstrates that, *even if* error were to be found in the trial court’s decision, such error would be harmless.

II. The trial court did not abuse its discretion in denying Appellant’s motion to remove all remaining shackling due to a concern that such might be audible to the jury.

Issue as it was presented at trial

After Ms. Lipinski took over Appellant’s defense at trial, she made numerous motions on his behalf before testimony resumed. One such motion was to request that Appellant’s remaining right wrist handcuff be removed during trial. The motion evolved into a request to remove all forms of restraints that Appellant was subject to based upon her assertion that the shackles can be heard when Appellant moved around. Her argument appears to concede that the shackles in question are not visible, due to “picnic screens and whatnot”, but that “you can nonetheless hear the metal, the belly chain that he’s in, the handcuffs that he’s in, the leg restraints that he’s in.”⁸ (R. p. 193-194).

⁸ Appellant sets forth in brief that “Appellant was shackled at the wrists and ankles and chained around his body. See Court’s Exhibits # 9 – 10. It was undisputed the shackles were audible to the

The trial court's response to the motion was that he would monitor Appellant's behavior as the trial proceeded, but that his restraints were based upon his own conduct during court and reiterated the reliance upon *Illinois v. Allen*. The court went on to note that it believed it has been "very indulgent with Mr. Kelly" in that regard. (R. p. 194-195).

Discussion

Appellant's second issue on appeal is similarly grounded to his first and likewise without merit. Just as the trial court was within its discretion, under the circumstances presented, to permit the restraint chair during trial, the court was likewise within its discretion to deny Appellant's motion to remove his right-handcuff and other restraints after the restraint chair was taken away. The court explicitly noted that Appellant was in restraints as a result of his own conduct. Moreover, careful review of the record demonstrates that Appellant's argument is not based upon his shackles being visible, but based upon the assertion that the shackles can be heard when Appellant moves. *Deck* does not apply to such a circumstance.

Allen and *Deck* are again the closest authorities for consideration of Appellant's argument. However, *Deck* is not applicable here, as it only applies to shackles that are visible to the jury. There is no controlling authority that requires a court to make a finding as to special circumstances before requiring "audible" shackling, and the record demonstrates that in light of the "picnic

jury." Respondent would seek to clarify a number of matters. First, Court's Exhibits #9 and #10 were not offered into the record until near the end of trial and were therefore not considered at the time of the rulings regarding restraints. Second, Court's Exhibits #9 and #10 in no way establish that Appellant's restraints were visible to the jury. Nor do they establish that these restraints were audible to the jury. Third, Respondent would clarify that counsel argued that the restraints were audible, but there is nothing to demonstrate that such were actually audible to the jury. The issue of whether the shackles could be heard was not discussed further. The court simply noted that restraints were necessary in light Appellant's behavior, as he had previously ruled, and he therefore denied the motion and moved on from the issue.

screens and whatnot” (R. p. 194) defense counsel never argued that Appellant’s restraints were visible to the jury.

The ruling of the trial court was proper, and Appellant’s arguments to the contrary fail for multiple reasons. First, by the time Appellant makes a motion to remove his remaining nonvisible shackling the trial court had already articulated a basis for permitting visible shackling due to Appellant’s conduct. Apparently with SLED’s approval and Ms. Lipinski taking over the defense, the court exercised its discretion again in allowing the trial to proceed without continued use of the restraint chair (R. p. 167), and therein allowed Appellant to have his left hand remain free for writing and be subject to only *nonvisible* shackling. Here, Appellant essentially received a second chance at some leniency from the trial court. Nevertheless, the trial court explicitly noted that Appellant’s remaining shackles were still a result of his behavior and conduct during the trial. Visible, audible, or both, the trial court exercised proper discretion in finding the restraints necessary. As such, the subsequent ruling is essentially a continuation of its prior ruling. The trial court was therefore *again* completely compliant with the holdings set forth by *Allen* and *Deck*.

Appellant’s subsequent motion requested the removal of all shackles, regardless of whether they were visible to the jury, on the basis that the chains could be heard when Appellant moved them. While defense counsel failed to demonstrate that *the jury* could hear them, as opposed to being able to personally hear them while presumably sitting next to her client, the issue is ultimately irrelevant as there is no prohibition for “audible” shackling. There is therefore no basis in which to prescribe legal error to the decision of the court. Moreover, there is also little basis to argue that the jury would be prejudicially swayed by hearing the chains of an inmate that they had already seen be subject to visible physical restraints earlier in the trial. Much like defense counsel’s

own concession at trial regarding the futility of correcting Appellant's choice to wear prison attire, "the cat is out of the bag". (R. p. 194).

Consequently, there is neither a sound legal basis to assert an abuse of discretion by the trial court, nor is there a reasonable practical argument that prejudice might arise from Appellant's remaining nonvisible shackling.

III. The trial court did not err when it denied Appellant's motion to either remove the law enforcement officers to another room to watch the trial virtually or insist that the officers not wear their uniforms or gear while attending the trial.

The issue as it was presented at trial

One of defense counsel's initial motions upon stepping into her representation of Appellant was to address the number of law enforcement officers in the courtroom. In her initial argument she cited that there were four SLED officers in plain clothing surrounding her in addition to two security officers, and that she also witnessed a nonspecific number of other officers in the courtroom. Appellant raised this issue as one being a risk of unfair prejudice that would convey to the jury that Appellant is an extremely violent person that requires "top-level security". (R. p. 183). She commented that she appreciated the "plain clothes" of some of the officers and sought to have all non-witness officers only attend in plain clothing as well. (R. p. 184). The court responded by noting that SLED has been asked to participate as a disinterested security team because the principal victims of Appellant's charged crimes were Greenville County Sheriff's Office deputies. The court denied the motion for requiring plain clothing of officers, again noting the simple fact that the victims in this case are law enforcement officers, and he would not ask those present and supporting their fellow officers to go change their clothing. (R. p. 184-186).

The motion was later renewed with the added request that the attending officer be removed from the courtroom to instead watch the trial via virtual courtroom. Appellant's brief argument demonstrates essentially the same level of security detail, but that the spectators in the back of the

court had increased the total to 20 or 25. The State argued against the motion, noting again the high profile and public interest in the trial, and the fact that the victims were law enforcement officers. The State argued that as a result the number of officer spectators was a proportionate showing under the circumstances. The motion was again denied. (R. p. 600-601). Prior to closing arguments, Appellant renewed the motion again, claiming the number of officers in the courtroom had reached 35 to 40. The court noted the objection and did not alter its ruling. (R. p. 634).

Discussion

The trial court did not abuse its discretion in denying Appellant's motion to have the attending officer removed from the courtroom to watch the trial via virtual courtroom, nor did it err in not requiring the attending officers to change clothing in order to attend the trial. The court exercised sound discretion in denying the motion while setting forth its understanding that the trial was a high-profile murder trial involving 3 victim officers of the Greenville County Sheriff's Office. This fact makes it obvious and inevitable that there would be both officers tasked with security and officers attending in solidarity and support for their fellow victim officers. Such a fact would not be lost on the jury either, as they were fully aware of who the harmed victims were and would understand that the presence of a large number of law enforcement officers would have nothing to do with Appellant's inherent level of dangerousness.

The Supreme Court's decision in *Holbrook v. Flynn* is the controlling law on this matter. Therein, the Court held:

While shackling and prison clothes are unmistakable indications of the need to separate a defendant from the community at large, the presence of guards at a defendant's trial need not be interpreted as a sign that he is particularly dangerous or culpable. Jurors may just as easily believe that the officers are there to guard against disruptions emanating from outside the courtroom or to ensure that tense courtroom exchanges do not erupt into violence. Indeed, it is entirely possible that jurors will not infer anything at all from the presence

of the guards. If they are placed at some distance from the accused, security officers may well be perceived more as elements of an impressive drama than as reminders of the defendant's special status. Our 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.

Holbrook v. Flynn, 475 U.S. 560, 569, 106 S. Ct. 1340, 1346, 89 L. Ed. 2d 525 (1986). The issue was briefly addressed in *Deck*, wherein the Court again noted that the deployment of security personnel during trial is not “the sort of inherently prejudicial practice that, like shackling, should be permitted only where justified by an essential state interest specific to each trial.” *Deck*, 544 U.S. 622, at 628 (citing *Holbrook*, 475 U.S., at 568–569, 106 S.Ct. 1340).

As such there is no affirmative duty upon the court to reach special findings to permit security personnel arrangements, nor is there a standard for which the court must evaluate the composition of the spectators in attendance. As the case was here, Appellant is not complaining about the security arrangements, for which there were approximately four nonuniformed officers and two uniformed security guards. Instead, Appellant is claiming a risk of prejudice arising from the number and type of spectators in attendance, and their clothing. That is not the type of circumstance for which *Holbrook* applies, and even if it were, the circumstances of the trial clearly demonstrate that officers sitting in the back of the courtroom are not being tasked with security.

Appellant murdered a cop by intentionally and recklessly dragging him from a moving vehicle into oncoming interstate traffic. The fact that numerous officers chose to attend the trial, and chose to attend in increasing numbers as the trial grew closer to a verdict, is not a prejudicial

matter for which Appellant may be construed by the jury as excessively dangerous.⁹ The jury members are human beings and would clearly recognize the reason for such an audience.

Moreover, the high number of law enforcement belies Appellant's own argument. It might be a palatable argument if Appellant had been able to show ten or more uniformed and tactically attired officers were perpetually in the immediate vicinity of Appellant throughout trial. But to suggest that the jury would presume 40 officers all seated in attendance in the courtroom benches was a means of security, when such had not previously been necessary, simply weakens the underlying argument. Contrary to Appellant's reliance on out-of-state federal court citations, there was no "feeling of terror of impending doom" weighing upon the jury if they chose to acquit Appellant, nor did the circumstances present anything more than a show of support for the fallen member of the community's police force. The presence of officers in the courtroom is not inherently a risk of unfair prejudice to the defendant. In a case like Appellant's, where the victims of the crime are all police officers, it is entirely expected, reasonable, and appreciated that the attendees of the trial would be largely fellow police officers. Appellant's argument to overturn his conviction on this ground is baseless, and neither *Holbrook* nor any other controlling authority dictates that the court's decision was an abuse of discretion.

IV. The trial court did not err under Rule 403 in admitting the various body camera and car camera exhibits from the responding officers, as each exhibit contained no uncomfortable gore, presented a different point of view, and chronicled each officers' actions prior to, during, and after the collisions.

The trial court did not err in admitting State's Exhibits #7, #8, and #9. Each exhibit provides the points of view and interactions of officers in the timeline of events leading up to, during, and after the collision took place. The disputed evidence, for which Appellant argues

⁹ This is especially so in light of the fact that the jury witnessed Appellant receive a *reduction in physical restraints* following an end to his disruptive behavior at the outset of trial.

should not have been admitted under Rule 403 limitations against cumulative evidence, does not even present cumulative evidence of the same events of the crime scene. The court correctly found each exhibit's probative value was not substantially outweighed by the danger of unfair prejudice and the court was within its discretion to admit the exhibits.

"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE. "Unfair prejudice means an undue tendency to suggest decision on an improper basis." *State v. Spears*, 403 S.C. 247, 252–53, 742 S.E.2d 878, 881 (Ct. App. 2013). "A trial court has particularly wide discretion in ruling on Rule 403 objections." *State v. Lee*, 399 S.C. 521, 527, 732 S.E.2d 225, 228 (Ct. App. 2012). "A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances." *State v. Collins*, 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014) (quoting *State v. Adams*, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct.App.2003)). Here, the trial court was well within its discretion to admit the evidence in question.

State's Exhibit #7 is the dash-cam footage of Officer Harrison's vehicle in the moments before, during, and after the second collision that occurred that afternoon. This exhibit demonstrates the *second collision*, for which neither Officer Wasserman nor Officer Ledbetter had a clear view at the time the collision occurred. Exhibit #7 is essentially the first offered and admitted evidence of an unobstructed angle of the second collision. Inexplicably, Appellant objected to the introduction of this exhibit on the basis of cumulative evidence, despite no other evidence of the second collisions vantage point having been previously offered and admitted. (R. p. 281). Such cannot be considered cumulative. Even if video evidence from other officers or

onlookers had been previously admitted, the unique vantage point of Officer Harrison, who was driving the car at the time of the collision, would still not constitute cumulative evidence.

State's Exhibit #8 was objected to on the basis that it was a split-screen exhibit of two videos, not on the basis of cumulative evidence. (R. p. 282). As such, the issue raised on appeal was not preserved via a specific and contemporaneous objection at trial. Nevertheless, even if the admission of exhibit 8 were to be evaluated for cumulative evidence, it is merely a split-screen combination of previously admitted State's Exhibit 2 which displays the first collision, and State's Exhibit 7 which displays the second collisions.¹⁰ Neither is cumulative under Rule 403.

Exhibit 8 does provide a slowed down version of the moment just before impact. However, the video does not actually show Victim Jumper being struck by Officer Harrison's police car, and the State explicitly argued that no such collision took place. Exhibit 8 has no gruesome or gory depictions at all, and this evidence was critical in further explaining the conclusions reached by the MAIT accident reconstruction expert. This was especially so given that Appellant made the proximate cause of Officer Jumper's death a key argument in its defense. (R. p. 293-296; p. 342; p. 356-403).

State's Exhibit 9 is the audio recording of Officer Richards interactions with Appellant after the collisions had taken place. Appellant argued that it was cumulative to such being captured by other officer cameras. Respondent would reiterate that each officer was at different locations at different times, and undertaking different obligations. Exhibit 9 provides the jury with numerous statements made by the Appellant, the communications made to Appellant by Officer Richards,

¹⁰ Exhibit #7 was not published to the jury in open court. Instead, the State moved on to the introduction of Exhibit #8, which was the contents of Exhibit #7 in a split screen view with State's Exhibit #2. This allowed the State to better demonstrate the collisions simultaneously so that the jury could perceive the time and spatial connections between the two collisions.

and such content has no correlation to inflammatory cumulative evidence depicting the collisions – which is the foundation of Appellant’s arguments on appeal.

The State had every right to establish the nature of both crashes, the corresponding timing of both crashes between Officer Wasserman’s and Officer Harrison’s in-car cameras, the dangerous and ultimately deadly position that Appellant’s actions put Victim Jumper into by attempting to drive off, and his subsequent comments and statements made after the collisions occurred. The disputed exhibits accomplish these endeavors while also addressing Appellant’s defense that Officer Harrison was the proximate cause of Victim Jumper’s death. The trial court’s decision to admit these exhibits over Appellant’s objections was entirely proper.

V. The trial court did not err in admitting the trauma blood taken by medical personnel despite the specific hospital employee who personally drew the blood being unidentified.

The trial court did not err in admitting the trauma blood taken by emergency medical personnel at the hospital, which was then transferred to law enforcement. Though the particular nurse in question who took the blood was not identified, the chain of custody was sufficiently established. Appellant’s identity as the perpetrator was not in question, and the known standard for Appellant’s DNA comparisons did not rely upon the trauma blood.

“A complete chain of evidence must be established as far as practicable, tracing possession from the time the specimen is taken from the human body to the final custodian by whom it is analyzed.” *State v. Carter*, 344 S.C. 419, 424, 544 S.E.2d 835, 837 (2001). “Courts have abandoned inflexible rules regarding the chain of custody and the admissibility of evidence in favor of a rule granting discretion to the trial courts.” *State v. Hatcher*, 392 S.C. 86, 94, 708 S.E.2d 750, 754 (2011). “Generally, we will uphold the chain of custody if the safeguards instituted ensure the integrity of the evidence, even if every person associated with the procedure is not personally

identified.” *Id.* In examining issues regarding the chain of custody, a mere suggestion that substitution could possibly have occurred is not enough to establish a break in the chain of custody. *Id.* “‘It is unnecessary ... that the police account for ‘every hand-to-hand transfer’ of the item; it is sufficient if the evidence demonstrates a reasonable assurance the condition of the item remains the same from the time it was obtained until its introduction at trial.’” *Id.* (citing *State v. Price*, 731 S.W.2d 287, 290 (Mo.Ct.App.1987)).

Appellant was transported to the Greenville Memorial Hospital to receive medical care. At the time he had still refused to provide his real name to officers or medical personnel. As such, during his care, as is customary, one of the various attending medical staff employees drew trauma blood from Appellant and labeled it Montana 220 - a unique code given to Appellant as an unidentified patient. Law enforcement investigated the matter, learned of Appellant’s code name with medical staff, obtained a warrant for the specified blood, and the medical staff surrendered the corresponding blood.

All that Appellant claims is missing is the name of the individual who physically drew and labeled the blood with the code name. The State established the chain of custody for the trauma blood as far as was practicable. The Solicitor indicated that the identification of the specific nurse who drew the blood was unknown; the State only knew the location where the blood was drawn – Trauma Unit A – and the correctly corresponding code that was given to Appellant during admission. (R. p. 465-474). Appellant is simply arguing for an inflexible application of the law. Appellant has no facts or circumstances to suggest that the trauma blood that was specifically sought and obtained via warrant is anything other than what it purports to be. Appellant during objection did not even suggest that some sort of substitution or tampering could have taken place, or that there was some substantive basis for which testimony from the unidentified nurse was

necessary. He simply wanted to exclude the evidence for technical reasons. The applicable law is not so onerous.

In practical terms, the circumstances of this case also demonstrate the lack of merit to the underlying dispute. *First, the record demonstrates that the known standard for Appellant was derived from a dried blood swab, not the trauma blood.* (R. p. 573). That standard was used to reach an 88 quadrillion likelihood comparison DNA match to Appellant on the gun. (R. p. 573-574). As such, the admission of the trauma blood is not critical to the state's evidence. However, even if it were – Appellant's argument is essentially suggesting that blood was taken from some other occupant of the hospital that day, mislabeled, provided to police for testing, and that that unknown hospital occupant randomly (and practical conclusiveness) happened to lay hands on a gun found in Appellant's trunk despite the fact that he was traveling from Atlanta to New York and did not reside in South Carolina. The notion is entirely unreasonable. As our Supreme Court has held, “‘It is unnecessary ... that the police account for ‘every hand-to-hand transfer’ of the item; it is sufficient if the evidence demonstrates a reasonable assurance the condition of the item remains the same from the time it was obtained until its introduction at trial.’” *Id.* (citing *State v. Price*, 731 S.W.2d 287, 290 (Mo.Ct.App.1987)).

Admission of the evidence in light of challenges to the chain of custody is a matter of discretion for the trial court. Under the circumstances of this case, the efforts of law enforcement, and the procedures used for acquiring and transferring the trauma blood in question, the court was within its discretion to admit the evidence.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments, convictions, and sentences of the trial court should be affirmed.

Respectfully submitted,

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August 1, 2024

Aug 01 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
The Honorable Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

RAY L. KELLY,

APPELLANT.

Appellate Case No. 2022-001449

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

This 1st day of August, 2024.

s/ W. Joseph Maye
W. JOSEPH MAYE
Assistant Attorney General

ATTORNEY FOR RESPONDENT

Aug 01 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
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Appeal from Greenville County
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THE STATE,

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v.

RAY L. KELLY,

APPELLANT.

Appellate Case No. 2022-001449

CERTIFICATE OF SERVICE

I, **Donna D'Alessio**, an employee of the Respondent and legal assistant to W. Joseph Maye, of counsel for the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Final Brief of Respondent and Certificate of Compliance has been forwarded to Appellant's counsel, Joanna K. Delany, Esq., via email today, August 1, 2024 to jdelany@sccid.sc.gov, and to her assistant at kwarren@sccid.sc.gov.

I further certify that all parties required by Rule to be served have been served.

This 1st day of August, 2024.

s/ Donna D'Alessio

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Ray Kelly, Appellant.

Appellate Case No. 2022-001449

Appeal From Greenville County
Edward W. Miller, Circuit Court Judge

Unpublished Opinion No. 2025-UP-247
Heard April 16, 2025 – Filed July 16, 2025

AFFIRMED

Appellate Defender Joanna Katherine Delany, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Deputy
Attorney General Donald J. Zelenka, Senior Assistant
Deputy Attorney General Melody Jane Brown, and
Assistant Attorney General William Joseph Maye, all of
Columbia; and Solicitor Cynthia Smith Crick, of
Greenville, all for Respondent.

PER CURIAM: Ray Kelly (Appellant) was convicted of several offenses, including murder, arising out of his attempt to flee a traffic stop. Appellant contends he is entitled to a new trial due to the use of a restraint chair for part of his trial, the use of shackles throughout the trial, the presence of uniformed law enforcement officers in the gallery, and the admission of certain evidence. We respectfully disagree and affirm.

STANDARD OF REVIEW

"Appellate courts apply the 'discretion' standard to review decisions trial courts make on procedural questions," including decisions to admit or exclude evidence and decisions to restrain a defendant in the jury's presence. *Morris v. BB&T Corp.*, 438 S.C. 582, 586, 885 S.E.2d 394, 396 (2023); *see also State v. Hatcher*, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." (quoting *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006))); *State v. Collins*, 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014) ("We review a trial court's decision regarding Rule 403 pursuant to the abuse of discretion standard and are obligated to give great deference to the trial court's judgment." (citation omitted)); *State v. Tucker*, 320 S.C. 206, 209, 464 S.E.2d 105, 107 (1995) ("Whether a defendant is restrained during trial is within the trial judge's discretion."); *State v. Stewart*, 278 S.C. 296, 303–04, 295 S.E.2d 627, 631 (1982) ("It is the duty of the trial judge to see that the integrity of his court is not obstructed by any person . . . , [and] exercise of this duty will not be disturbed absent an abuse of discretion.").

"An abuse of discretion occurs [and warrants reversal] when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *Hatcher*, 392 S.C. at 91, 708 S.E.2d at 753 (quoting *Pagan*, 369 S.C. at 208, 631 S.E.2d at 265); *see also Deck v. Missouri*, 544 U.S. 622, 629 (2005) (finding a trial court's decision to restrain a defendant in the jury's presence should be reversed "only in cases of clear abuse" because precedent "emphasize[s] the importance of preserving trial court discretion").

RESTRAINT CHAIR

Appellant argues the trial court erred in authorizing the use of a restraint chair at the beginning of his trial because he believes it was not justified by the circumstances and the trial court "did not articulate why a verbally 'disruptive' defendant who refused to come out of the holding cell required a restraint chair." We disagree.

"Due to the very nature of the court as an institution, it must and does have an inherent power to impose order, respect, decorum, silence, and compliance with lawful mandates." *United States v. Shaffer Equip. Co.*, 11 F.3d 450, 461 (4th Cir. 1993). After cataloging the history of the prohibition against visible shackles, both in English and early American courts, the U.S. Supreme Court held "the Constitution forbids the use of visible shackles during the . . . guilt phase, *unless* that use is 'justified by an essential state interest' . . . specific to the defendant on trial." *Deck*, 544 U.S. at 624, 626–28 (quoting *Holbrook v. Flynn*, 475 U.S. 560, 568–69 (1986)); *see also Tucker*, 320 S.C. at 209, 464 S.E.2d at 107 ("The trial judge is to balance the prejudicial effect of shackling with the considerations of courtroom decorum and security."). However, "any such determination must be case specific; that is to say, it should reflect particular concerns . . . related to the defendant on trial." *Deck*, 544 U.S. at 633.

We recognize the harm inherent in the jury seeing restraints on a defendant. The U.S. Supreme Court described the use of shackles and gags in an American courtroom as "something of an affront to the very dignity and decorum of judicial proceedings that the judge [was] seeking to uphold." *Illinois v. Allen*, 397 U.S. 337, 344 (1970). Still, the Court found that, in some cases, complete physical restraint "might possibly be the fairest and most reasonable way to handle" a disruptive defendant. *Id.*

Appellant was extraordinarily disruptive during the leadup to his trial and at the beginning of the trial. The record is replete with instances where he was completely uncooperative and refused to answer basic questions posed by judges. Appellant was cautioned three times, by two different judges, that he was being disruptive and there would be consequences if he continued. Appellant did not heed these warnings and continued to disrupt the proceedings by refusing to participate even though he was representing himself. This shocking display of noncompliance culminated in Appellant refusing to exit his holding cell before opening statements. As a result, Appellant was put in a restraint chair and brought into the courtroom. The trial court made a finding, outside of the jury's presence, that Appellant had been disruptive and that it was approving the restraint chair's use pursuant to the U.S. Supreme Court's guidelines in *Illinois v. Allen*.

It is evident from the record that the trial court was aware of the applicable law and that the court ruled in light of that law and based on the facts of this case. This was accordingly an appropriate exercise of the trial court's discretion. *See Morris*, 438 S.C. at 587, 885 S.E.2d at 397 ("[W]a trial court's . . . thought process of applying sound principles of law to the court's view of the facts and circumstances is evident

in the record of proceedings[,] . . . the appellate court will defer to the trial court's exercise of discretion"); *see also State v. Hill*, 266 S.C. 49, 51, 221 S.E.2d 398, 399 (1976) ("The exercise of discretion implies conscientious judgment, not arbitrary action, and takes account of the law and particular circumstances of the case, being directed by the reason and conscience of the judge to a just result."). Appellant contends the trial court could have utilized other options available under *Illinois v. Allen*, but the trial court does not abuse its discretion simply because it could have done something differently.

On this exceptional record, we find the trial court did not abuse its discretion in authorizing the use of the restraint chair.

AUDIBLE SHACKLES

The trial court allowed Appellant to proceed without the restraint chair after Appellant authorized standby counsel to represent him. However, the trial court decided Appellant would remain shackled at the wrists and ankles with the exclusion of his writing hand. Appellant argues requiring him to remain shackled throughout the trial was unduly prejudicial because the shackles were audible to the jury. We respectfully disagree.

It is well settled that visible shackling is inherently prejudicial because the use of visible shackling "suggests to the jury that the justice system itself sees a 'need to separate [the] defendant from the community at large.'" *Deck*, 544 U.S. at 630 (quoting *Holbrook*, 475 U.S. at 569). As far as we are aware, no authority discusses prejudice stemming from audible shackles that are concealed from the jury's vision. Our supreme court has made clear that no error occurs when shackles were not seen by the jury and "[t]he trial judge took precautions to minimize any prejudice the restraints might have caused throughout the trial." *Tucker*, 320 S.C. at 209–10, 464 S.E.2d at 107. In this case, trial counsel acknowledged that the trial court placed picnic screens "and whatnot" around the table where Appellant was seated during the trial to ensure the shackles were not visible to the jury. Thus, the trial court did not err in balancing the need to restrain Appellant against the need to minimize any potential prejudice from the sight of the shackles.

The prejudice arising from shackling is identical to the prejudice that stems from forcing a defendant to be tried in prison attire. *See Holbrook*, 475 U.S. at 569 (noting "shackling and prison clothes are unmistakable indications of the need to separate a defendant from the community at large"); *see also Estelle v. Williams*, 425 U.S. 501, 504 (1976) ("Courts have, with few exceptions, determined that an accused should

not be compelled to go to trial in prison or jail clothing because of the possible impairment of the presumption [of innocence] so basic to the adversary system." (footnote omitted)). We point out the parallel between the prejudice of visible restraints and the prejudice from wearing prison attire because it is undisputed that Appellant *voluntarily chose* to wear the clothing issued by the jail throughout his trial. Given Appellant's refusal to change clothes, we cannot see how he could possibly have been prejudiced by the fact that the jury may have heard Appellant's restraints but not seen them. *See Estelle*, 425 U.S. at 507 ("No prejudice can result from seeing that which is already known." (quoting *United States ex rel Stahl v. Henderson*, 472 F.2d 556, 557 (5th Cir. 1973))); *see also id.* at 508 ("A defendant may not remain silent and willingly go to trial in prison garb and thereafter claim error." (quoting *Hernandez v. Beto*, 443 F.2d 634, 637 (5th Cir. 1971))).

PRESENCE OF LAW ENFORCEMENT

Appellant claims the number of uniformed law enforcement officers in the courtroom during his trial violated his "right to a fair trial free from outside influence" because it created an "overwhelming partisan atmosphere in the courtroom." We disagree.

When a party claims courtroom procedure infringed on his or her right to a fair trial, an appellate court must analyze the "scene presented to jurors and determine whether what [the jury] saw was so inherently prejudicial as to pose an unacceptable threat to [the] defendant's right to a fair trial." *Holbrook*, 475 U.S. at 572. "[I]f the challenged practice is not found inherently prejudicial and if the defendant fails to show actual prejudice, the inquiry is over." *Id.* Though the Supreme Court has suggested *Holbrook* "appl[ies] only to state-sponsored practices," *Carney v. Musladin*, 549 U.S. 70, 76 (2006), this court has applied the "actual or inherent prejudicial effect on the jury" test to spectator conduct during trial. *State v. Paige*, 375 S.C. 643, 648–49, 654 S.E.2d 300, 303 (Ct. App. 2007) (quoting *State v. Hill*, 331 S.C. 94, 501 S.E.2d 122 (1998) (holding mere presence of spectators is not sufficient to establish inherent or actual prejudice; rather, the challenged spectators must engage in some affirmative conduct in an attempt to influence the jury))).

Our caselaw recognizes a clear distinction between a spectator and an activist. A spectator, who merely observes a trial in open court, only becomes an "activist" when they attempt to influence the jury or otherwise participate in the trial through affirmative conduct. *See Paige*, 375 S.C. at 649, 654 S.E.2d at 303 (finding no evidence to support the defendant's prejudice claim based on a group of spectators at the murder trial wearing buttons with a picture of the murder victim on them); *id.*

(highlighting there was no evidence the spectators attempted "to make gestures, point to the pictures, or do anything in an [effort] to influence the jury," nor were they permitted to per the trial court's instruction).

Like the trial court in *Paige*, the trial court in this case took precautions to mitigate any prejudice that could arise from the gallery. Before trial began, the court stated, "I would instruct the gallery that this is – could be a contentious trial. So I would expect everyone in the gallery to be on their best behavior. I don't know how else to say it." Similarly, before closing arguments, the trial court cautioned "the gallery to maintain the propriety and sanctity of the courtroom. If someone gets excited or upset, I would ask you to remove yourself as unobtrusively as possible."

Moreover, no evidence suggests the uniformed officers crossed the line from spectators to activists. *See, e.g., Holbrook*, 475 U.S. at 569 ("[T]he presence of guards at a defendant's trial need not be interpreted as a sign that he is particularly dangerous or culpable. . . . Indeed, it is entirely possible that jurors will not infer anything at all from the presence of the guards. If they are placed at some distance from the accused, security officers may well be perceived more as elements of an impressive drama than as reminders of the defendant's special status."). Appellant acknowledged that the law enforcement officers attended trial to show support for a fallen officer. Nothing in the record demonstrates the jury did not have the same understanding. *See Hill*, 331 S.C. at 101, 501 S.E.2d at 126 (finding prejudice was "wholly speculative" when appellant "presented no evidence to show the presence of the officers had any effect on the jury").

Accordingly, we find the trial judge did not err as he appropriately managed the gallery to prevent spectators from influencing the jury or disrupting the proceedings.

BODY CAMERA VIDEOS

Appellant argues the trial court erred in admitting several pieces of body camera footage from the traffic stop and the subsequent car crash because he believes the videos should have been excluded under Rule 403, SCORE. Again, we respectfully disagree.

"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCORE. Videos or "photographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are not

necessary to substantiate material facts or conditions." *State v. Lee*, 399 S.C. 521, 528, 732 S.E.2d 225, 228 (Ct. App. 2012) (citation modified).

"Cumulative evidence has repeatedly been defined to be additional evidence of the same kind to the same point." *State v. Funderburke*, 251 S.C. 536, 540, 164 S.E.2d 309, 311 (1968). While the challenged videos were certainly similar to other evidence, we do not find they were needlessly cumulative. The videos showed different angles of this encounter, and this was relevant because Appellant questioned which of the multiple collisions caused the officer's fatal injuries. The videos likely allowed the officers to testify more effectively and likely helped the jury better understand the testimony as each video portrayed a different point of view as this incident developed.

Furthermore, the probative value of the videos was not substantially outweighed by the danger of unfair prejudice because they contained no gruesome or graphic content that was likely to inflame the jury. To the extent the content of this evidence may have been unpleasant, the content was significantly less graphic than the photographs admitted in *Collins*. See 409 S.C. at 536, 763 S.E.2d at 29 (holding the probative value of photographs depicting the extensive injuries of a ten-year-old victim's mauling and partial consumption by dogs was not substantially outweighed by the danger of unfair prejudice because "the photos aided the jury in evaluating the testimony offered"); see also *id.* at 535, 763 S.E.2d at 28 ("Courts must often grapple with disturbing and unpleasant cases, but that does not justify preventing essential evidence from being considered by the jury, which is charged with the solemn duty of acting as the fact-finder."); *id.* ("Even the most gruesome photographs may be admissible if they tend to shed light on any issue, to corroborate testimony, or if they are essential in proving a necessary element of a case, are useful to enable a witness to testify more effectively, or enable the jury to better understand [the] testimony." (alteration in original) (quoting *Camargo v. State*, 327 Ark. 631, 940 S.W.2d 464, 467 (1997))).

Accordingly, we find the trial court did not abuse its discretion in admitting the body camera videos into evidence.

CHAIN OF CUSTODY

It is well settled "that a party offering into evidence fungible items such as drugs or blood samples must establish a complete chain of custody as far as practicable." *Hatcher*, 392 S.C. at 91, 708 S.E.2d at 753 (quoting *State v. Sweet*, 374 S.C. 1, 6, 647 S.E.2d 202, 205 (2007)). South Carolina courts "have never held the chain of

custody rule requires every person associated with the procedure be available to testify or identified personally, depending on the facts of the case." *Id.* at 93, 708 S.E.2d at 754 (quoting *S.C. Dep't of Soc. Servs. v. Cochran*, 364 S.C. 621, 629, 614 S.E.2d 642, 646 (2005)). While the chain of custody rule is flexible, "[e]vidence is still required as to how the item was obtained and how it was handled to ensure that it is, in fact, what it is purported to be." *Id.* at 95, 708 S.E.2d at 755. In other words, "it is unnecessary that the police account for every hand-to-hand transfer of the item; it is sufficient if the evidence demonstrates a reasonable assurance the condition of the item remains the same from the time it was obtained until its introduction at trial." *Id.* (citation modified); *see also Cochran*, 364 S.C. at 629, 614 S.E.2d at 646 ("Generally, we will uphold the chain of custody if the safeguards instituted ensure the integrity of the evidence, even if every person associated with the procedure is not personally identified.").

Appellant relies on *State v. Williams* for the assertion that a chain of custody is insufficient when the State cannot identify the hospital employee that drew the pertinent blood sample. 301 S.C. 369, 392 S.E.2d 181 (1990). There, our supreme court found the chain of custody inadequate because the blood sample was initially mislabeled, no one could identify who drew the blood, and no one could identify who transported the blood to the laboratory. *Id.* at 371, 392 S.E.2d at 182. The court emphasized that those "breakdowns, *cumulatively*, render[ed] the chain of custody fatally defective." *Id.* (emphasis added).

There are no similar, cumulative breakdowns here. The blood sample in this case was not initially mislabeled. Appellant refused to identify himself at the hospital. As a result, law enforcement only knew Appellant's "trauma number," which is a unique number assigned to virtually every person admitted to the emergency room. An officer testified that he presented a search warrant to the attending nurse who confirmed the warrant accurately reflected Appellant's trauma code. From there, the officer obtained blood samples corresponding to that trauma number. A defendant who willfully conceals his identity cannot later claim the unique code assigned to him qualifies as a misidentification.

Also, unlike in *Williams*, the State in this case identified who transported the blood. An officer testified at trial that he received the blood sample from the hospital, initiated a chain of custody form, and transported the sample to a South Carolina Law Enforcement Division agent. The State presented evidence establishing the blood here "[was], in fact, what it [was] purported to be." *Hatcher*, 392 S.C. at 95, 708 S.E.2d at 755. The State's DNA analysis expert testified that she tested the

sample and the results showed that the blood was "88 quadrillion times more likely to be" Appellant's DNA.

Accordingly, we find no reversible error in admitting the blood sample into evidence because the State sufficiently explained how the blood sample was obtained, provided how it was transported, and conclusively established the blood belonged to Appellant. *See Hatcher*, 392 S.C. at 93, 708 S.E.2d at 753–54 ("[W]here all individuals in the chain are, in fact, identified and the manner of handling is reasonably demonstrated, it is not an abuse of discretion for the trial judge to admit the evidence in the absence of proof of tampering, bad faith, or ill-motive."); *see also id.* at 94, 708 S.E.2d at 754 ("In examining issues regarding the chain of custody, a mere suggestion that substitution could possibly have occurred is not enough to establish a break in the chain of custody.").

AFFIRMED.

THOMAS, KONDUROS, and HEWITT, JJ., concur.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
Jul 31 2025
SC Court of Appeals

Appeal from Greenville County

Honorable Edward W. Miller, Circuit Court Judge

Opinion No. 25-UP-247

THE STATE,

RESPONDENT,

V.

RAY L. KELLY,

APPELLANT

APPELLATE CASE NO. 2022-001449

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Ray L. Kelly respectfully requests that this Court grant rehearing in this matter as to Issues 1 – 4, based on significant points this Court has misapprehended and/or overlooked. During the November term of 2020, a Greenville County Grand Jury indicted Appellant for murder, two counts of resisting arrest with assault, driving without a license, and providing false information to police. During the September term of 2021, a Greenville County Grand Jury indicted Appellant for trafficking cocaine base, 28 – 100 grams, and possession of a weapon during the commission of a violent crime. During the November term of 2022, a Greenville County Grand Jury indicted Appellant for a third count of resisting arrest

with assault. Appellant was also charged with speeding and following too closely. R. 701-714; R. 100, l. 21 – 101, l. 10. Appellant was tried before the Honorable Edward W. Miller and a jury, from September 26 – 29, 2022. W. Walter Wilkins, III, and Grace Moroney prosecuted the case. Appellant appeared pro se with Mindy Lipinski as standby counsel during initial portions of the trial. Standby counsel subsequently stepped in to represent Appellant as his counsel. R. 61; R. 166, l. 17 – 171, l. 20; R. 73, ll. 4-24.

Appellant was acquitted of speeding and following too closely. Appellant was convicted as indicted on the remaining offenses, and he was sentenced to serve: life without parole for murder; thirty years for trafficking cocaine base, 28 – 100 grams, third offense; five years for possession of a weapon during the commission of a violent crime; ten years for each count of resisting arrest with assault; time served for driving without a license; and time served for giving false information to police. R. 685, l. 20 – 687, l. 7; R. 697, ll. 15-23; R. 715-721.

On April 16, 2025, a three-judge panel of this Court heard oral argument. On July 16, 2025, this Court affirmed Appellant’s convictions in *State v. Kelly*, Op. No. 2025-UP-247 (S.C. Ct. App. filed July 16, 2025). Appellant respectfully asserts this Court overlooked and/or misapprehended the following points.

1.

The trial court erred in forcing Appellant, who was on trial for murdering a police officer, to appear before the jury in a restraint chair, where the restraint chair was not justified by the circumstances, since restraints must be case specific.

This case involved the death of Officer Conley Jumper (Decedent), who was killed when he was hit by a tractor-trailer while trying to arrest Appellant after Appellant was pulled over on the interstate and subsequently tried to flee. R. 140, l. 3 – 102, l. 12; R. 237, l. 6 – 248, l. 23;

State's Exhibit #2; R. 150, ll. 4-15; R. 161, l. 19 – 166, l. 6; R. 247, l. 14 – 259, l. 19; R. 280, l. 2 – 289, l. 6; R. 305, ll. 7-20; R. 284, l. 8 – 344, l. 3; R. 347, l. 3 – 447, l. 8.

The trial began with Appellant proceeding pro se, with standby counsel present. Appellant made arguments and objections that were ill-conceived and verbally disruptive. However, he did not use profanity, he did not threaten anyone, and he did not commit any physical misconduct. R. 46, l. 20 – 23, l. 9; R. 71, ll. 4-14; R. 83, ll. 8-11; R. 92, l. 16 – 97, l. 14; R. 112, l. 24 – 123, l. 16. The trial proceeded through voir dire, jury selection, swearing of the jury, and the court's introductory remarks. The proceedings broke for lunch, and when they resumed, Appellant had been placed in a restraint chair. Appellant stated, "Let the record reflect that I'm not here willingly. I'm handcuffed, shackled. I'm tied to a chair. I was insulted. And I do not choose to participate in any of the proceedings. . ." The court asked why Appellant was in the restraint chair. R. 131, l. 13 – 134, l. 10. A SLED officer, who was doing security for the trial, told the court that Appellant had refused to come out of his holding cell and resisted efforts to put him in the restraint chair. The court ruled that it approved the use of the restraint chair pursuant to *Illinois v. Allen*, 397 U.S. 337, 343 (1970), because Appellant had been "disruptive." R. 134, l. 11 – 135, l. 12. Two body camera recordings of what happened in Appellant's holding cell were made a part of the record. Court's Exhibit #9 and Court's Exhibit #10. Court's Exhibit #4 and Court's Exhibit #5 are photographs of Appellant in the restraint chair that were published by the media.

The trial proceeded with Appellant in the restraint chair through the prosecution's opening statement. Appellant did not give an opening statement. When the State finished its direct examination of its first witness, Appellant asked to speak with standby counsel. Appellant then agreed to be represented by standby counsel. He also told standby counsel he would walk into the courtroom. Thereafter, the court noted Appellant was no longer in the restraint chair, but he

remained shackled except for his writing hand. The court broke for the evening. R. 166, l. 15 – 171, l. 1; R. 175, ll. 14-17.

This Court held that while it recognize[d] the harm inherent in the jury seeing restraints on a defendant,” Appellant was “extraordinarily disruptive,” “completely uncooperative and refused to answer basic question posed by judges,” “continued to disrupt the proceedings by refusing to participate even though he was representing himself,” and “refus[ed] to exit his holding cell before opening statements.” *State v. Kelly*, Op. No. 2025-UP-247 at 3. This Court concluded that it was “evident from the record that the trial court was aware of the applicable law and that the court ruled in light of that law and based on the facts of this case. This was accordingly an appropriate exercise of the trial court’s discretion.” *Id.* “Appellant contends the trial court could have utilized other options available under *Illinois v. Allen*, but the trial court does not abuse its discretion simply because it could have done something differently.” *Id.*

This Court thus essentially concluded that if any form of restraint was justified, all forms of restraint were justified. Respectfully, this Court overlooked Appellant’s arguments that the trial court’s response must be tailored to the facts and circumstances; the failure to do so was an abuse of discretion. “[A] defendant can lose his right to be present at trial if, after he has been warned by the judge that he will be removed if he continues his disruptive behavior, he nevertheless insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom.” *Illinois v. Allen*, 397 U.S. 337, 343 (1970). “We believe trial judges confronted with disruptive, contumacious, stubbornly defiant defendants must be given sufficient discretion *to meet the circumstances of each case.*” *Id.*, 397 U.S. at 343-44 (emphasis added). Allen argued with the judge in an abusive manner and threatened the judge, saying that the judge would be a “corpse” after the lunch break. He tore counsel’s file and threw

the papers on the floor. The court repeatedly warned Allen it would remove him after another outburst, removed him after further outbursts, permitted him in again later, only for more problems to ensue, including vile and abusive language. Eventually, Allen was permitted to be present for the remainder of the trial. *Id.*, 397 U.S. at 340-41.

The Supreme Court concluded, “there are at least three constitutionally permissible ways for a trial judge to handle an obstreperous defendant like Allen: (1) bind and gag him, thereby keeping him present; (2) cite him for contempt; (3) take him out of the courtroom until he promises to conduct himself properly.” *Id.*, 343 U.S. at 344. “Allen’s *behavior* was clearly of such an extreme and aggravated nature as to justify either his removal from the courtroom or his total physical restraint.” *Allen*, 397 U.S. at 346 (emphasis added). However, “no person should be tried while shackled and gagged except as a last resort.” *Id.* at 344.

“[G]iven their prejudicial effect, due process does not permit the use of visible restraints if the trial court has not taken account of the circumstances of the particular case.” *Deck v. Missouri*, 544 U.S. 622, 632 (2005). “Such a determination may of course take into account the factors that courts have traditionally relied on in gauging potential security problems and the risk of escape at trial.” *Id.* “[A] judge [may], in the exercise of his or her discretion, [] take account of special circumstances, including security concerns, that may call for shackling. In so doing, it accommodates the important need to protect the courtroom and its occupants. But *any such determination must be case specific; that is to say, it should reflect particular concerns, say, special security needs or escape risks, related to the defendant on trial.*” *Id.*, 544 U.S. at 633 (emphasis added). “A defendant in a criminal trial may not be required to wear handcuffs, leg shackles, or other restraints in the presence of the jury unless the trial court makes specific findings on the record as to the particular reasons the restraints are necessary. If the court finds restraints

are necessary, it must make every reasonable effort to ensure the restraints are not visible to the jury.” *State v. Heyward*, 441 S.C. 484, 493, 895 S.E.2d 658, 663 (2023).

The trial court did not undertake the careful balancing of competing interests and it did not articulate why a verbally “disruptive” defendant who refused to come out of the holding cell required a restraint chair. This was error. The facts of *Allen* are not like the facts in this case. Appellant did not use vile language, destroy property, or threaten to kill the judge, as Allen did. Moreover, Appellant stated he did not want to be present. Total physical restraint, a measure of last resort, was not befitting these circumstances; it was not a tailored response. When Appellant appeared before the court in the restraint chair, the trial court should have explored alternatives instead of leaving Appellant in the chair before the jury. “[N]o person should be tried while shackled and gagged except as a last resort.” *Allen*, 397 U.S. at 344.

The trial court abused its discretion. *See State v. Hatcher*, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (abuse of discretion occurs when trial court’s conclusions either lack evidentiary support or are controlled by an error of law); *Fontaine v. Peitz*, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987) (“When the trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred.”). The trial court could have used its discretion to fashion an appropriate remedy for these facts. Instead, the court seemingly deferred to courtroom security’s decision to put Appellant in a restraint chair, and allowed Appellant to be seen by the jury in the chair.

2.

The trial court erred in requiring Appellant to remain shackled throughout his trial for murdering a police officer, where shackling was not justified by the circumstances, since shackling must be case specific.

The next day of trial, defense counsel made a motion to remove Appellant's shackles, arguing the shackles should be removed since they were audible, and that although they were not visible, "you can nonetheless hear the metal, the belly chain that he's in, the handcuffs that he's in, the leg restraints that he's in. And so the Defense is making a motion to remove those so as to mitigate it." The court ruled, "I go back to the seminal case of *Illinois vs. Allen* about he could be gagged and it would be appropriate if he earned that. So he is where he is based on his conduct up to this point." It was undisputed the shackles were audible. Trial continued. R. 193, l. 20 – 194, l. 25.

This Court observed: "As far as we are aware, no authority discusses prejudice stemming from audible shackles that are concealed from the jury's vision. Our supreme court has made clear that no error occurs when shackles were not seen by the jury and '[t]he trial judge took precautions to minimize any prejudice the restraints might have caused throughout the trial.'" *State v. Kelly*, Op. No. 2025-UP-247 at 4 (quoting *State Tucker*, 320 S.C. 206, 209–10, 464 S.E.2d 105, 107 (1995)). This Court concluded: "the trial court placed picnic screens 'and whatnot' around the table where Appellant was seated during the trial to ensure the shackles were not visible to the jury. Thus, the trial court did not err in balancing the need to restrain Appellant against the need to minimize any potential prejudice from the sight of the shackles." *State v. Kelly*, Op. No. 2025-UP-247 at 4. This Court further held,

The prejudice arising from shackling is identical to the prejudice that stems from forcing a defendant to be tried in prison attire . . . We point out the parallel between the prejudice of visible restraints and the prejudice from wearing prison attire because it is undisputed that Appellant voluntarily chose to wear the clothing issued by the jail throughout his trial. Given Appellant's refusal to change clothes, we cannot see how he could possibly have been prejudiced by the fact that the jury may have heard Appellant's restraints but not seen them. See *Estelle*, 425 U.S. at 507 ("No prejudice can result from seeing that which is already known." (quoting *United States ex rel*

Stahl v. Henderson, 472 F.2d 556, 557 (5th Cir. 1973)); *see also id.* at 508 (“A defendant may not remain silent and willingly go to trial in prison garb and thereafter claim error.” . . .

State v. Kelly, Op. No. 2025-UP-247 at 4 – 5.

Respectfully, this Court overlooked or misapprehended Appellant’s argument that shackling was not justified by the circumstances, and that the shackles went to malice and dangerousness, not simply general criminal propensity as a jail uniform does. Moreover, Appellant is not complaining about going to trial in jail scrubs, his objection was to the shackles. “Visible shackling undermines the presumption of innocence and the related fairness of the factfinding process.” *Deck v. Missouri*, 544 U.S. 622, 630 (2005). “[G]iven their prejudicial effect, due process does not permit the use of visible restraints if the trial court has not taken account of the circumstances of the particular case.” *Id.*, 544 U.S. at 632.

“[T]he use of physical restraints visible to the jury [are prohibited] absent a trial court determination, in the exercise of its discretion, that they are justified by a state interest specific to a particular trial.” *Id.*, 544 U.S. at 629. “[A] judge [may], in the exercise of his or her discretion, [] take account of special circumstances, including security concerns, that may call for shackling . . . But any such determination must be case specific; that is to say, it should reflect particular concerns, say, special security needs or escape risks, related to the defendant on trial.” *Deck*, 544 U.S. at 633. “[A] defendant in a criminal trial may not be required to wear handcuffs, leg shackles, or other restraints in the presence of the jury unless the trial court makes specific findings on the record as to the particular reasons the restraints are necessary. If the court finds restraints are necessary, it must make every reasonable effort to ensure the restraints are not visible to the jury.” *State v. Heyward*, 441 S.C. 484, 493, 895 S.E.2d 658, 663 (2023).

Although the shackles were not visible to the jury, they were audible. While the jury can see, it can also hear. Appellant was shackled at the wrists and ankles and chained around his body. See Court's Exhibits # 9 – 10. It was undisputed the shackles were audible to the jury. The trial court erred where it did not balance and articulate the competing interests to determine whether the shackles were necessary. Appellant had not attempted to assault anyone or intimidate the jury. He had not committed threats or misconduct that would justify the shackles. Instead, Appellant had been *verbally* disruptive to courtroom decorum prior to his representation by counsel, and he had refused to come out of the holding cell. When counsel made a motion to remove the shackles, Appellant's pro se verbal disruptions were no longer a problem since he was represented by a lawyer. Appellant had agreed he would thereafter come out of the holding cell. These restraints were not "case specific." *Deck v. Missouri*, 544 U.S. at 633.

"[S]hackling is "inherently prejudicial." *Deck v. Missouri*, 544 U.S. at 635 (quoting *Holbrook v. Flynn*, 475 U.S. at 568). "[W]hen a court, without adequate justification, orders the defendant to wear shackles that will be seen by the jury, the defendant need not demonstrate actual prejudice to make out a due process violation." *State v. Heyward*, 441 S.C. 484, 505, 895 S.E.2d 658, 669 (2023) (citations and internal quotation marks omitted). In *Heyward*, the South Carolina Supreme Court found "the State did that in this case by conclusively proving Heyward's guilt with other overwhelming evidence such that no other rational conclusion could be reached except that he is guilty of each crime." *Id.*, 441 S.C. at 506, 895 S.E.2d at 670. In this case, the jury deliberated for close to four hours and asked if it could convict Appellant of manslaughter. R. 682, l. 21 – 685, l. 14. There was no overwhelming evidence of guilt. The State did not show Appellant was not prejudiced from the audible shackles. The shackles also unfairly went to malice, which was in issue in this case, because they portrayed Appellant as dangerous in a way that a jail uniform

did not. *See Estelle v. Williams*, 425 U.S. 501, 508 (1976) (“[I]nstances frequently arise where a defendant prefers to stand trial before his peers in prison garments. The cases show, for example, that it is not an uncommon defense tactic to produce the defendant in jail clothes in the hope of eliciting sympathy from the jury.”). Appellant was prejudiced. *Deck v. Missouri*, 544 U.S. at 635.

3.

The trial court erred in Appellant’s trial for murdering a police officer, where it failed to exercise any discretion regarding the large number of uniformed officers in the gallery (35 – 40 officers in uniform including tactical gear), since Appellant had the right to a fair trial free from outside influence.

As the trial proceeded, defense counsel made a motion that uniformed law enforcement officers in the gallery be instructed to appear in plainclothes. Defense counsel noted that in addition to four plainclothes SLED officers and two uniformed courthouse deputies, the prior day there were “a multitude” of other officers present in the courtroom which presented an unfair prejudice to Appellant. The court denied the motion. R. 183, l. 2 – 184, l. 19; R. 185, l. 25 – 186, l. 4.

Counsel subsequently renewed her motion, noting there were now twenty or twenty-five officers in the courtroom. Defense counsel moved that the officers be instructed to wear plainclothes, or that the court send them into another courtroom to view the proceedings via livestream. Defense counsel noted the number of officers was “overwhelming” and “unduly prejudicial.” “I feel the need to renew our motion given the number is climbing.” The court denied the motion. R. 600, l. 7 – 601, l. 14.

Later, counsel moved for a mistrial based on the overwhelming presence of law enforcement officers in the courtroom. Counsel renewed her motion “to limit the number of law

enforcement officers in the courtroom, particular [sic] during the closing argument. We're now upwards of 35 to 40 officers in this courtroom, some in tactical gear, various uniforms of any kind." "[T]he prejudice to the Defendant is overwhelming. It could be live streamed in another courtroom. They could have appeared in any—plain clothes. There's any number of options that were available and have been raised by the Defense that would have mitigated that prejudice. And so for that, we ask the Court to consider alternatives so as not to unduly prejudice the jury." The court denied the motions. After the verdicts were returned, counsel moved for a new trial based upon "passion and prejudice" due to "the heavy law enforcement presence." The court denied the motion. Notably, at no time did the solicitor or the trial court dispute counsel's estimates of the number of officers in the room or her description of them as being in uniform, with some in tactical gear. R. 624, l. 9 – 269, l. 9; R. 634, ll. 1-16; R. 688, l. 19 – 689, l. 13.

This Court found,

Our caselaw recognizes a clear distinction between a spectator and an activist. A spectator, who merely observes a trial in open court, only becomes an "activist" when they attempt to influence the jury or otherwise participate in the trial through affirmative conduct. *See Paige*, 375 S.C. at 649, 654 S.E.2d at 303 . . . **Like the trial court in *Paige*, the trial court in this case took precautions to mitigate any prejudice that could arise from the gallery.** . . . Moreover, no evidence suggests the uniformed officers crossed the line from spectators to activists . . . Accordingly, we find the trial judge did not err as he appropriately managed the gallery to prevent spectators from influencing the jury or disrupting the proceedings.

State v. Kelly, Op. No. 2025-UP-247 at 5 – 6.

Appellant respectfully asserts this Court misapprehended his argument regarding the impartiality of the courtroom. While this Court concluded the large number of uniformed officers in the courtroom did not behave as activists, the "spectator" versus "activist" distinction utilized by this Court misapprehends the holdings of *Holbrook v. Flynn*, 475 U.S. 560 (1986) and *State v.*

Hill, 331 S.C. 94, 501 S.E.2d 122 (1998). “Whenever a courtroom arrangement is challenged as inherently prejudicial, . . . the question must be not whether jurors actually articulated a consciousness of some prejudicial effect, but rather whether an unacceptable risk is presented of impermissible factors coming into play.” *Holbrook v. Flynn*, 475 U.S. at 570 (cleaned up).

In *Hill*, the defendant contended the trial judge erred in refusing to clear the courtroom and the hallways of uniformed officers, and in refusing to order officers who were witnesses to dress in civilian clothing. *State v. Hill*, 331 S.C. 94, 100, 501 S.E.2d 122, 125 (1998). It was unclear how many officers were present, although the defendant counted six people including bailiffs and solicitor’s officer personnel. *Id.* The South Carolina Supreme Court held that, “To prevail on such a claim, appellant must show that the measures taken in the courtroom created either an actual or inherent prejudicial effect on the jury. Inherent prejudice occurs when ‘an unacceptable risk is presented of impermissible factors coming into play.’” *Id.*, 331 S.C. at 101, 501 S.E.2d at 126 (quoting *Holbrook v. Flynn*, *supra*). The Court found no inherent prejudice. *Id.* The holdings of *Hill* and *Holbrook* did not rest on activism. The question in this case was not whether the officers behaved as activists, the question was whether the courtroom appeared to the jury as an impartial place—whether the upwards of 35 to 40 uniformed officers, some in tactical gear, presented an unacceptable risk of impermissible factors coming into play. *Holbrook v. Flynn*, 475 U.S. at 570.

This Court concluded the trial court took measures to mitigate prejudice, as the trial court did in *State v. Paige*, 375 S.C. 643, 654 S.E.2d 300 (Ct. App. 2007). Respectfully, the trial court did not take measures to mitigate the prejudice. It denied counsel’s motions to require the officers to wear plainclothes or attend in a virtual courtroom and denied her mistrial motion. The court gave standard instructions to the gallery to comport itself properly, as is done in virtually any murder case. In *Paige*, the trial court responded to the defendant’s complaint prior to jury selection

that several spectators had on buttons with the victim's picture on them by ruling that those spectators were not to sit in the front row or gesture to the buttons, and there was thereafter no further complaint by the defendant. *State v. Paige*, 375 S.C. at 646, 654 S.E.2d at 302. This Court in *Paige* concluded there was "no evidence of record that the jurors in this matter were ever exposed to these button photos, and, if they were, whether they could perceive that they depicted the victim. Accordingly, we find no actual or inherent prejudice to Paige based on the record before us." *Id.*, 375 S.C. at 649, 654 S.E.2d at 303–04. In this case, it was undisputed the large presence of uniformed, tactically kitted-out officers were visible to the jury. Appellant was prejudiced because the circumstances presented an unacceptable risk of impermissible factors coming into play. *Holbrook v. Flynn*, 475 U.S. at 570.

4.

The trial court erred in admitting repeated depictions (video, audio, and photographic) of the fatal crash and its aftermath, where the probative value of the cumulative evidence was substantially outweighed by the danger of unfair prejudice, since the evidence should have been excluded pursuant to Rule 403, SCRE.

Witnesses, including an expert in accident reconstruction, testified about the crash. The officers involved in the traffic stop, crash, and subsequent scene were equipped with body-worn cameras and microphones, and their cars had dashboard cameras. Initially, some of these recordings came in without objection (State's Exhibits #1 – 3; State's Exhibit #5). However, when the prosecutor piled on, counsel objected pursuant to Rule 403, SCRE. These exhibits included video footage, audio recordings, and photographic evidence (State's Exhibit #6; State's Exhibit #7; State's Exhibit #8; State's Exhibit #9; State's Exhibit #26). Counsel argued the exhibits should be excluded under Rule 403, SCRE. The court overruled the objections. The State repeatedly

played and replayed depictions of Decedent being hit by the tractor trailer and Decedent as he lay dying in the road. This included futile attempts to render aid to Decedent and his last words. R. 359, l. 10 – 360, l. 11; R. 400, ll. 2-20; R. 206, ll. 6-16; R. 255, l. 14 – 258, l. 1; R. 281, ll. 11-16; R. 284, ll. 3-15; R. 327, ll. 7-25; R. 368, ll. 4-12; R. 402, l. 18 – 403, l. 14.

This Court concluded,

While the challenged videos were certainly similar to other evidence, we do not find they were needlessly cumulative. The videos showed different angles of this encounter, and this was relevant because Appellant questioned which of the multiple collisions caused the officer's fatal injuries. The videos likely allowed the officers to testify more effectively and likely helped the jury better understand the testimony as each video portrayed a different point of view as this incident developed.

Furthermore, the probative value of the videos was not substantially outweighed by the danger of unfair prejudice because they contained no gruesome or graphic content that was likely to inflame the jury.

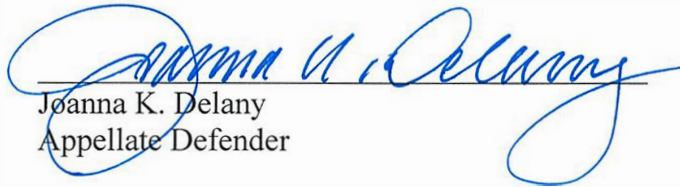
State v. Kelly, Op. No. 2025-UP-247 at 7.

Respectfully, this Court misapprehended or overlooked Appellant's arguments regarding the exhibits, which included not only video, but audio and photographic exhibits. The exhibits were inadmissible under Rule 403 because of their emotionally inflammatory content, which was present regardless of whether they were "gruesome." They were needlessly cumulative and were played and replayed. There was no need for the jury to hear the decedent's last words or watch him slowly die in the road. There was no need for them to see and hear all of these exhibits and to see and hear the same exhibits multiple times. "Photographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are not necessary to substantiate material facts or conditions." *State v. Lee*, 399 S.C. 521, 528, 732 S.E.2d 225, 228 (Ct. App. 2012) (cleaned up).

See State v. Middleton, 288 S.C. 21, 24, 339 S.E.2d 692, 693 (1986) (testimony of the forensic pathologist negated any arguable evidentiary value of autopsy photographs).

Rehearing should be granted to Appellant Ray L. Kelly.

Respectfully submitted,



Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 31st day of July, 2025.

RECEIVED**Jul 31 2025****SC Court of Appeals**

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

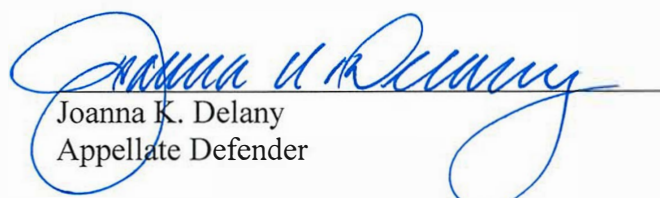
RAY L. KELLY,

APPELLANT

APPELLATE CASE NO. 2022-001449

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon W. Joseph Maye, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Ray L. Kelly, #389127, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 31st day of July, 2025.



Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

The South Carolina Court of Appeals

The State, Respondent,

v.

Ray Kelly, Appellant.

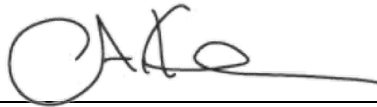
Appellate Case No. 2022-001449

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire

Melody Jane Brown, Esquire

Joanna Katherine Delany, Esquire

William Joseph Maye, Esquire

Donald J. Zelenka, Esquire

FILED
Aug 13 2025

Cynthia Smith Crick, Esquire
The Honorable Edward W. Miller