

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Fairfield County
R. Knox McMahon, Circuit Court Judge

THE STATE,

RECEIVED
AUG 17 2015
SC Court of Appeals
RESPONDENT,

V.

DEREKEE JOHNSON,

APPELLANT

APPELLATE CASE NO. 2014-000920

REPLY BRIEF OF APPELLANT

R. MORRISON M. PAYNE

PO Box 315
Walterboro, SC 29488
(843)549-1060

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEYS FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS 1

TABLE OF AUTHORITIES 2

STATEMENT OF ISSUE ON APPEAL 3

ARGUMENT

I. THE COURT SHOULD HAVE MADE FURTHER
INQUIRY UPON LEARNING THAT A JUROR SAW DEFENDANT
IN SHACKLES 3

CONCLUSION 4

TABLE OF AUTHORITIES

CASES

Estelle v. Williams, 425 U.S. 501 (1976)5

Irvin v. Dowd, 366 U.S. 717 (1961)5

State v. Baum, 355 S.C. 209, 584 S.E.2d 419 (Ct. App. 2003)5

State v. Cameron, 311 S.C. 204, 428 S.E.2d 10 (Ct.App.1993)5

U.S. v. Pina, 844 F.2d 1 (1st Cir. 1988)6

U.S. v. Waldon, 206 F.3d 597 (6th Cir. 1999)5

OTHER AUTHORITIES

S.C. Const. art I, §§ 3 & 145

STATEMENT OF ISSUE

THE TRIAL COURT SHOULD HAVE MADE FURTHER INQUIRY UPON LEARNING THAT THE JURY SAW DEFENDANT IN SHACKLES.

ARGUMENT

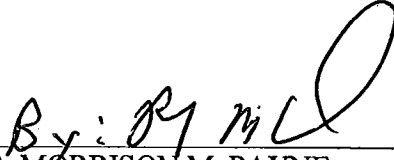
In its brief, Respondent recognizes Appellant's right to a fair trial and that a jury should be free from outside influences. The parties further agree that the law holds that it is not "inherently prejudicial" to a defendant when he is seen by jurors in shackles outside of the courtroom. However, in several of the cases cited by Respondent, the Court engaged in further inquiry to determine if a defendant had actually been prejudiced. It appears from these cases that there is no requirement that the defendant ask for a hearing on this issue.

In People v. Studier, 2015 WL 447408 (E.D. Mich. Aug. 2, 2012), after being informed that some jurors may have seen the defendant in restraints outside of the courtroom, the Court asked those jurors if they saw anything that gave them concern. An evidentiary hearing was conducted on this issue in Ghent v. Woodford, 279 F.3d 1121 (9th Cir. 2002). In State v. Dixon, 289 Kan. 46, 209 P.3d 675 (2009), the juror who allegedly saw the defendant in handcuffs was questioned by the Court. Testimony was taken from jurors on this issue in Wharton v. Chappell, 765 F.3d 953 (9th Cir. 2014). Requiring a court to inquire further when it is notified that a juror has seen a defendant in restraints seems a small burden to ensure that every defendant receives a fair trial.

CONCLUSION

For the reasons stated, this Court should reverse Appellant's conviction.

Respectfully submitted,

By: 

R. MORRISON M. PAYNE

ROBERT M. DUDEK
Chief Appellate Defender

ATTORNEYS FOR APPELLANT

This 17th day of August, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
AUG 17 2015
SC Court of Appeals

Appeal from Fairfield County
R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

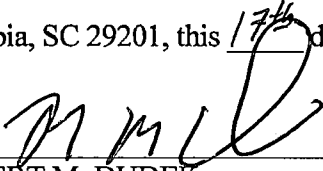
DEREKEE JOHNSON,

APPELLANT

APPELLATE CASE NO. 2014-000920

CERTIFICATE OF SERVICE

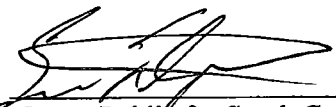
The undersigned attorney hereby certifies that a true copy of the Reply Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 17th day of August, 2015.



ROBERT M. DUDEK
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 17th day of August, 2015.



(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022