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STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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

RECEIVED  
OCT 01 2015  
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DEREKEE JOHNSON,

APPELLANT

APPELLATE CASE NO. 2014-000920

\_\_\_\_\_  
FINAL REPLY BRIEF OF APPELLANT  
\_\_\_\_\_

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## STATEMENT OF ISSUE

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

## ARGUMENT

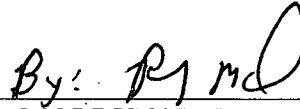
In its brief, Respondent recognizes Appellant's right to a fair trial and that a jury should be free from outside influences. The parties further agree that the law holds that it is not "inherently prejudicial" to a defendant when he is seen by jurors in shackles outside of the courtroom. However, in 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 1st day of October, 2015.

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CERTIFICATE OF SERVICE

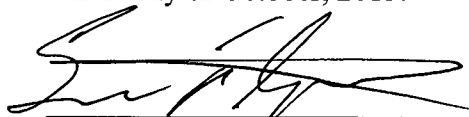
The undersigned attorney hereby certifies that a true copy of the Final Reply Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 1<sup>st</sup> day of October, 2015.



ROBERT M. DUDEK  
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 1<sup>st</sup> day of October, 2015.



(L.S.)

Notary Public for South Carolina  
My Commission Expires: October 30, 2022.