

23-5803

SUPREME COURT OF THE UNITED STATES

ORIGINAL

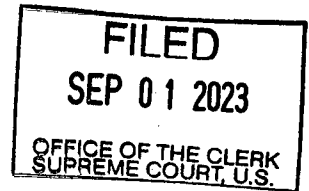
ROBERT K. DECKER,


PETITIONER-APPELLANT,

v.

EDWIN BAEZ, et al.,

RESPONDENT-APPELLEE.



PETITION  FOR CERTIORARI

On appeal from the Seventh Circuit Court of Appeals

Case No. 21-2362

From the United States District Court, Southern District of Indiana,
Terre Haute, Division, Docket No. 2:18-cv-00278-MJD-JMS

by: Robert K. Decker #51719-074
Marion United states Penitentiary
4500 Prison Road
P.O. Box 1000
marion, IL 62959

Q U E S T I O N S P R E S E N T E D

1. Did the United States District Court, Magistrate Judge err in the decision to have the Plaintiff, Robert K. Decker be handcuffed, (left wrist) and shackled during the trial on July 12, 2021.
2. Did the United States District Court, Magistrate Judge err in the decision to have the Plaintiff's motion for the "Spoliation of Evidence" that the Defendants failed to preserve during the Discovery process.
3. Did the Seventh Circuit Court of Appeals err in affirming the decision of the United States District Court, Magistrate Judge's decision to have the Plaintiff, Robert K. Decker be required to be handcuffed (left wrist) and shackled during the trial of July 12, 2021.
4. Did the Seventh Circuit Court of Appeals err in affirming the decision of the United States District Court, Magistrate Judge's decision to have the Plaintiff's motion for "Spoliation of Evidence" to include it with directions to the jury be denied.
5. Finally the United States District Court Magistrate Judge and the Seventh Circuit Court of Appeals had erred in the denial of the matter to have the Plaintiff, Robert K. Decker appear before the jury "Handcuffed" and shackled in view during the time that the Plaintiff had giving testimony of the events that had transpired on September 20, 2017

LIST OF PROCEEDINGS IN THE LOWER COURTS

1. This case was first filed in the United States District Court for the Southern District of Indiana, docket number: 2:18-cv-00278.
2. The Plaintiff-Appellant, Robert K. Decker, hereinafter, "Mr. Decker" gave consent to the Magistrate Judge, Mark J. Dinsmore to over see the pre-trial proceedings and the trial it self.
3. The complaint was filed on June 19, 2018, in the United States District Court, Southern District of Indiana, Terre Haute Division.
4. Trial had commenced on July 12, 2021, which was a two day trial, before the Magistrate Judge, Mark J. Dinsmore.
5. At the close of the trial, the jury returned a verdict in favor of the Defendants on all claims against them.
6. In the complaint, Mr. Decker had alleged that all of the Defendants had used excessive force against Mr. Decker. Mr. Decker had asserted excessive force claims against Edwin Baez, Lieutenant, Officer Zachariah Hoffman, Officer Benjamin Monnett, Officer Adam Rogers, and Officer Joseph Vest. Also Mr. Decker had claimed a failure to protect claim against the four officers, against the Lieutenant, Edwin Baez for assaulting Mr. Decker.
7. The incident had occurred on September 20, 2017 in the "S.H.U." "Special Housing Unit, in Terre Haute, United States Penitentiary.
8. Mr. Decker was represented by attorney Pamela Page on December 16, 2019, for all pre-trial motion and the trial.
9. On June 10, 2021, Mr. Decker's attorney had filed a motion for the "Unshackling and permission" to be dressed in civil attire at the trial. The motion was granted in part and denied in part. Mr.

Decker was allowed to appear before the jury in civilian attire but was denied the unshackling of his wrists and ankles. He was required to be hand cuffed to a belly chain with only his left wrist and his ankles were also to be shackled.

10. Mr. Decker had also filed a motion for the spoliation of a video recording that was not preserved pursuant to the Code of Federal Regulations and the Program Statement of the Federal Bureau of Prisons. That motion was also denied by the Magistrate Judge the day before the trial and the day of the trial.

11. Mr. Decker was also written an incident report of Code violation of 214A "Attempted" which there is no such code in the Program Statement or the Code of Federal Regulations.

12. Mr. Decker had filed his Notice of Appeal on July 23, 2021 to the Seventh Circuit Court of Appeals.

13. The case was submitted to the Seventh Circuit on June 15, 2023 and was decided on June 21, 2023, "Affirming the decision of the Jury and the United States District Court's decision.

JURISDICTIONAL BASIS

For the United States District Court, jurisdiction was based on 28 U.S.C. §1331 "Federal Question, and violation of the Eighth Amendment of the United States Constituion, to be free from cruel and unusual punishment.

For the Seventh Circuit Court of Appeals, jurisdiction was based on 28 U.S.C. §1291.

The United States Supreme Court has jurisdiction on the basis of 28 U.S.C., §1254, "Certiorari" and "Certified Question."

FIRST ARGUMENT

The Magistrate Judge in the United States District Court had erred by not allowing Mr. Decker to appear before the jury unshackled during his testimony during the trial, in full view of the jury, pursuant to Mr. Decker's Constitutional rights to appear unchained and unshackled.

The fact that Mr. Decker was allowed to appear in civilian clothing negated the right to appear before the jury unchained in full view of the jury. Especially when the Magistrate Judge had discussed Mr. Decker's institutional infraction of Attempted Assault against a staff member, which I was found guilty to cover up the fact of the assault/excessive force and failure to protect against Mr. Decker that he had alleged.

Mr. Decker was classified as Medium Clasification by the Bureau of Prisons and there was four U.S. Marshal's, with the Five Bureau of Prisons personel in the Court room at the time of the trial:. Mr. Decker has never been convicted of an escape and he presently incarcerated for a non-violent offense, e.g. Drug & Money Laundering Offenses.

By appearing before the jury, Mr. Decker was highly prejudiced. Mr. Decker's substantial rights to a fair trial were violated pursuant to the United States Constitution, Fifth Amendment, by appearing before the jury in full view by being shackled and by being hand cuffed to a belly chain.

Mr. Decker's attorneys had objected on the record to Mr. Decker being shackled and hand cuffed to a belly chain before the trial.

"The actual impact of a particular practice on the judgment of jurors cannot always be fully determined. But This Court has left no doubt that the probability of deleterious effects on fundamental rights calls for close judicial scrutiny. *Estes v. Texas*, 381 U.S. 532 (1965); *In re Murchison*, 349 U.S. 133 (1955). Courts must do the best they can to evaluate the likely effects of a particular procedure, based on reason, principle, and common human experience." "The potential effects of presenting an accused before the jury in prison attire need not, however, be measured in the abstract. e.g. cuffs and shackles. 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 so basic to the adversary system.

In the present case, it was more like Mr. Decker was on trial due to him having to appear in a Belly Chain and Shackles in front of the jury. The American Bar Association's Standards for Criminal Justice also disapproves the practice. ABA Project on Standards for Criminal Justice, Trial by Jury §4.1(b), p. 91 (App Draft 1968). This is a recognition that the constant reminder of the accused's condition implicit in such distinctive, identifiable attire may affect a juror's judgment. The defendant's clothing is so likely to be a continuing influence throughout the trial that, not unlike placing a jury in the custody of deputy sheriffs who were also witnesses for the prosecution, an unacceptable risk is presented of impermissible factors coming into play. *Turner v. Louisiana*, 379 U.S. 466, 473 (1965); see also *Estelle v. Williams*, 425 U.S. 501, 505 (1976). In the present case Mr. Decker was prejudiced by having to appear before the jury in a belly chain and shackles in full view

of the jury when Mr. Decker had testified in behalf of his position that his Constitutional rights were violated by the Defendants.

This is a First Impression for this Honorable Court for a Prisoner to have to appear in front of jury in full view of being presented in a Belly Chain with one hand handcuffed to the bell-chain and shackled at his ankles. The question to this Honorable Court is; "Should a prisoner have to appear before a jury of his peers in a Civil Suit against his own captors for excessive force and a failure to protect claim.

WHEREFORE, the Petitioner, Robert K. Decker, moves this Honorable Court to consider the position that he has presented to this Honorable Court and grant Certiorari in the above entitled action.

This is also a First Impression for this Honorable Court for a Defendant that had failed to preserve Electronically Stored Information in a Civil Suit against officials that failed to preserve video that would have shown the entire incident on video.

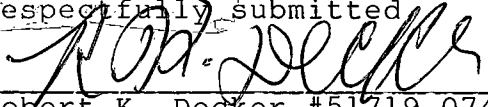
WHEREFORE, the Petitioner, Robert K. Decker moves this Honorable Court to grant Certiorari in the above entitled action and issue an opinion in the above matters.

DECLARATION IN SUPPORT OF PETITION FOR CERTIORARI

I certify and state that the foregoing statements made by me are true and correct to the best of my knowledge and beliefs, pursuant to the penalties of perjury and 28 U.S.C. §1746.

Dated: September 1, 2023

Respectfully submitted

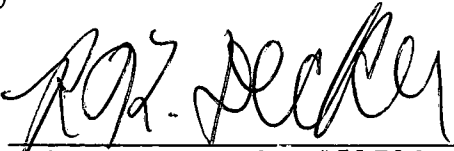

Robert K. Decker #51719-074
USP Marion, PO Box 1000
Marion, IL 62959

CERTIFICATE OF SERVICE

I, certify that I personally handed my petition for mailing postage paid, first class, on September 1, 2023, to be mailed to:

United States Attorney's Office
Southern District of Indiana
Attn: Julian Wierenga, A.U.S.A.
10 W. Market Street, Suite 2100
Indianapolis, IN 46204

Dated: September 1, 2023


Robert K. Decker #51719-074