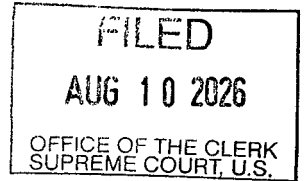


26-5621 ORIGINAL
No. _____



IN THE

SUPREME COURT OF THE UNITED STATES

In Re ANTHONY KETASSDA LEMICY ---PETITIONER

(Your Name)

ON PETITION FOR A WRIT OF MANDAMUS

PETITION FOR WRIT OF MANDAMUS

Anthony K. Lemicy 49801-086

(Your Name)

U.S.P. Terre Haute ---P.O. Box 33

(Address)

Terre Haute, In 47808

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

- 1) Does the guilty verdict that comes about at the end of a pro-se litigant's trial, outweighs the Constitutional violation of having the defendant shackled during their entire proceeding without a hearing or showing justification ?
- 2) Is the burden still upon the government to prove that the pro-se litigant didn't suffer any prejudice due to being seen in shackles, or is the burden upon the defendant to present contrary evidence to challenge the conviction in order to have protection of a Constitutional right.?
- 3) Does the District Court, and the Appellate Court have the discretion to disregard a Constitutional right that has deep roots in common law dating back to the 18th century ?

LIST OF PARTIES

Matthew A. Radefeld - counsel/ co-counsel
Elizabeth U. Carlyle - appeal attorney
Colleen Lang - United States Assistance Attorney
Nathan Chapman - United States Assistance Attorney
Henry E. Autrey -- Trial Judge/ sentencing judge

RELATED CASES

In the matter of Samuel Winship, 397 U.S. 358, 25 L. Ed. 2d 368, 90 S.Ct 1068 (1970)
Violation of the right to Due Process of Law as guaranteed by Amendments the Fifth and the Fourteenth.

Estelle v. Williams, 425 U.S. 501, 503-04, 48 L. Ed. 2d 368, 90 S. Ct. 1068 (1970)
Defendant is forced to wear prison clothing before the jury.

Chapman v. California, 386 U.S. 18, 24, 17 L. Ed. 2d 205, 87 S. Ct. 824 (1967)
The State must prove "Beyond a Reasonable Doubt" that the shackling did not contribute to the verdict obtained.

Deck v. Missouri, 544 U.S. 622, 632, 125 S. Ct. 2007, 161 L. Ed. 2d 953 (2005)
Due Process provisions of the Federal Constitution's Fifth and Fourteenth Amendments prohibits...use...of...shackles that are visible to the jury.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
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87 S. Ct. 824 (1967)	10
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15 S. Ct. 394 (1895)	6,7
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L. Ed. 2d 953 (2005)	6,8,9,10
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APPENDIX A

Eighth Circuit Court of Appeals brief

APPENDIX B

Insert of transcript of Juror No. 51

APPENDIX C

Insert of transcrip showing poilce custody on August 6, 2019

APPENDIX D

Documented proof of evidence being altered on August 6, 2019

APPENDIX E

Copy of Order denying rehearing

APPENDIX F

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF MANDAMUS

Petitioner respectfully prays that a writ of mandamus issue.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☒ reported at 122 F. 4th 298,306 (8th cir 2024); or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was November 26, 2024.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: January 17, 2025, and a copy of the order denying rehearing appears at Appendix E.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including Petitioner (date) on May 2, 2025 (date) in Application No. 24 A 1055.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment V (Bill of Right), states in relevant part: "No person ... shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law."

Amendment VI (Bill of Rights), states in relevant part: "In all criminal prosecution, the accused shall enjoy the right to a speedy and public trial, by an impartial jury."

Amendment XIV (Civil War Amendments), states in relevant part: Section 1, "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

18 U.S.C. §2251(a), states in relevant part: "Any person who employs, uses, persuaded, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transport any minor in or affecting interstate or foreign commerce ... with the intent that such minor engage in, any sexually explicit conduct For the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live depiction of such conduct ... if that visual depiction was produced or transmitted using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means."

STATEMENT OF THE CASE

Mr. Lemicy, was originally indicted with on count of violating statute 18 U.S.C. §2251(a), on September 19, 2019. When Mr. Lemicy, refused the plea deal, and insisted on going to trial, his indictment was superseded with three(3) more counts of violating 18 U.S.C. §2251(a), on April 28, 2021.

Mr. Lemicy, wanted to be able to question certain witnesses at his Evidentiary hearing on October 20, 2021. His court appointed lawyer moved to stand by counsel, and the hearing was rescheduled to November 16, 2021. The hearing was denied. Mr. Lemicy, filed many motions requesting another attorney, and evidence, all of his request were denied. Mr. Lemicy, didn't want to proceed to trial as a pro-se litigant, yet he didn't want to proceed with counsel who was refusing to assist in building a defense or gather evidence.

Mr. Lemicy, as a pro-se litigant, proceeded to trial, which started on March 27, 2023. The trial judge did not conduct a 'Farreta' hearing, nor did the judge conduct a hearing outside of the jury presence to justify having Mr. Lemicy, in ankle shackles. Even though, the court offered clothing due to his stand by counsel failing to provide an outfit, Mr. Lemicy, felt coerced into wearing his jail uniform for as he stated, he didn't feel comfortable wearing something that's been sitting in the courthouse for years, and that he didn't even know if it was clean or his size.

During voir dire, Mr. Lemicy, was sitting at a table surrounded by two(2) U.S. Marshals. The stand by lawyer was at another table five(5) feet away. A potential juror, commented on seeing Mr. Lemicy, in the ankle shackles and orange jumpsuit in front of all the other potential jurors. The judge questioned Juror No. 51, about his feelings towards the 'government', and Mr. Lemicy, and yet the trial judge still didn't conduct a hearing outside of the presence of the jury that justified having Mr. Lemicy, in ankle shackles.

Mr. Lemicy, was sentenced on August 16, 2023, and the judge did not conduct a 'Farreta' hearing which denied Mr. Lemicy, the assistance of counsel, and forced him to proceed pro-se at his sentencing hearing. Mr. Lemicy, was shackled at his sentencing hearing as well. Mr. Lemicy, was sentenced to 1,440 months(120 years). He timely filed an appeal.

Mr. Lemicy, requested that his appellate lawyer address the issue of him being shackled during the whole three(3) days of his trial without justification. The appellate lawyer refused. Mr. Lemicy, filed a brief to the appeals court addressing the issue of being shackled using the standard of Deck v. Missouri. The appellate lawyer didn't have an answer for any of the appeals court questiones. and yet the government admitted that Mr. Lemicy, was shackled all three(3) days of his trial.

Mr. Lemicy, was denied relief. The appeals court stated that the overwhelming evidence of guilt overrides the Constitutional violation of Mr. Lemicy, being shackled without justification. The appeals court misinterpreted Mr. Lemicy's argument of being shackled, as he was bringing forth the issue of being compelled to wear his jail issued clothing, and barely focused on the issue that was brought forth.

REASONS FOR GRANTING THE PETITION

I

"... the criminal process presumes that the defendant is innocent until proven guilty." Holbrook v. Flynn, 475 U.S. 560,568-569,89 L. Ed. 2d 525,106 S. Ct. 1340 (1986) quoting Coffin v. United States, 156 U.S. 432,453,39 L. Ed. 481,15 S. Ct. 394 (1895)"Shackling undermines the presumption of innocence and the related fairness of the fact finding process." Deck v. Missouri, 544 U.S. 622,624,125 S. Ct. 2007,161 L. Ed. 2d 953 (2005) quoting Estelle v. Williams, 425 U.S. 501,503,505,48 L. Ed. 2d 126,96 S. Ct. 1691 (1976).

Shackling affronts the courtrooms formal dignity which includes the respectful treatment of defendant's, and reflects the importance of the matter at issue. Guilt or Innocence. The practices that were used at Mr. Lemicy's, trial, posed such a threat to the fairness of the fact finding process, that he is requesting close judicial scrutiny on account of the probability of deleterious effects on his fundamental rights. paraphrasing Este v. Texas, 381 U.S. 532.

"The routine use of shackles in the presence of the jurors, undermines the symbolic, yet concrete objective, that a judge must seek to maintain a judicial process, that is a dignified process."..."...the use of shackles at trial 'affronts' the the 'dignity and decorum' of the judicial proceeding that the judge is suppose to uphold." Illinois v. Allen, 397 U.S. 337,25 L. Ed. 2d 353 90 S. Ct. 1957 (1970)

The record contains no 'formal or informal' findings that the judge can refer to, as a risk of escape, or a threat to the courtroom security, and no where did the judge explain on the record why the shackles were necessary. If there are indisputable good reasons for shackling, it is not this one. The absence of finding, does not meet the 'case by case determination' that the Due Process Clause requires.

The nature of the charge against a particular defendant cannot themselves provide the entire justification for shackling a defendant.

Mr. Lemicy, has never disrupted any of his previous appearances or gave the Court an indication that he would have 'outburst' during the trial. Mr. Lemicy, does not have a history of escape attempts, and the courtroom for Mr. Lemicy's trial was on the 10th floor. Mr. Lemicy, doesn't have nor had a history of violence, for the court to be concerned about courtroom security, also there

were two(2) U.S. Marshals sitting directly next to Mr. Lemicy, thru out his trial.

When a defendant, chooses to represent himself, a trial court should be particularly attuned to the negative impact on the presumption of innocence, and a defendant's credibility before the jury. When a shackled defendant represents himself, the jury is faced with a constant reminder that the defendant, is shackled, as he makes statements, questiones witnesses, and introduce evidence. The presence of shackles on a man pleading his case is hard to ignore, and creates a significant risk that he will be prejudiced and can eviscerate the presumption of innocence guaranteed to all defendants.

"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 administartion of our criminal law." Coffin v. United States, 156 U.S. 432,453,39 L. Ed 481,15 S. Ct. 394 (1895)

The record will reflect that the judge did not conduct a hearing outside the presence of the jury to justify the shackling of Mr. Lemicy, on none of the three(3) days of his trial,

The record is undeniable and will support the contention that a potential juror, during voir dire, seen Mr. Lemicy, INSIDE the courtroom, in ankle shackles, and commented on the sight in front of all the other potential jurors.

Juror No 51: "If I went to that interview in an orange suit and ankle bracelets, how is that fair and impartial ?"

The Court: "Well, so whats your real question because what it suggest to me in your tenor and tone is that somehow, ... you have formed an opinion about the person known as the defendant seated at the table that would affect your ability to be fair to the defendant and perhaps even fair to the United States, is that what your telling me ?"

Juror No 51: "... I don't see how that's fair and impartial." (Appendix B)

II

The trial court had two(2) uniformed U.S. Marshals sitting next to Mr. Lemicy, all three(3) days of his trial without justification. With Mr. Lemicy, being shackled, and surrounded by the U.S. Marshals through out his trial, it would be hard for the government to demonstarate, and establish Beyond a Reasonable Doubt that the error thats spoken about, did not contribute to the guilty verdict against him.

It was not a necessity for the trial court to have identifiable guards in

the courtroom, nor was there a justification for them to be sitting next to Mr. Lemicy, at his defense table. (the stand by counsel was sitting at another table 5 feet away). The jurors knew that Mr. Lemicy, was shackled, and with the jury seeing him surrounded by the uniformed U.S. Marshals was so inherently prejudicial and unacceptable, that it denied Mr. Lemicy, a fair trial.

"The presence of the [U.S. Marshals] is a decision that must be resolved solely by the trial justice after consideration of all relevant factors." Holbrook quoting State v. Byrnes, 116 RI 925,927,357 A2d 448,449 (1976). This is another abuse of discretion that the court imposed upon Mr. Lemicy without a hearing on the record to justify.

This court said "While, in our supervisory capacity, we might express a preference that officers providing courtroom security in federal courts not be easily identifiable by jurors as guards." Holbrook 475 U.S. at 573 "All a federal court may do in such a situation is look at the scene presented to jurors, and determine whether, what they saw was so inherently prejudicial, as to pose an unacceptable threat to the defendant's right to a fair trial." Holbrook at 574.

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, instead they were used as a reminder of the defendant's special status.

"Lower courts have disagreed about the specific procedural steps prior to shackling, the amount and type of evidence needed to justify restraints, and forms of prejudice warrants a new trial, but not the basic principle. In light of this precedent, and a lower court consensus disapproving routine shackling, dating back to the 19th century, it is clear that this court's prior statement gave voice to a principle deeply embedded in the law '... the Fifth and Fourteenth Amendments prohibit the use of physical restraints visible to the jury absent a trial court determination'." Deck 544 U.S. at 630.

The record supports the jury's awareness of the restraints which impeded Mr. Lemicy, who was proceeding as a pro-se litigant, from participating in the process. "The appearance of the offender ...in shackles inevitably implies to jury ... that court authorities consider the offender a danger to the community, often a statutory aggravator and nearly always a relevant factor in jury decision making, and almost inevitably affects adversely the jury's perception of the character of the defendant." Deck at 633.

Through control of a defendant's appearance, the [government] can exert a 'powerful influence' on the outcome of the trial.

The right to a fair trial, guaranteed by the Sixth and Fourteenth Amendments, is the principle that one accused of a crime is entitled to have his guilt or innocence determined solely on the basis of the evidence introduced at trial, and not on grounds of official suspicion, indictment, continued custody, or other circumstances not adduced as proof at trial. Holbrook quoting Taylor v. Kentucky, 436 U.S. 478, 485, 56 L. Ed. 2d 468, 98 S. Ct. 1930 (1978)

"To implement the presumption, courts must be alert to factors that may undermine the fairness of the fact-finding process. In the administration of criminal justice, courts must carefully guard against dilution of the principle that guilt is to be established by probative evidence and Beyond a Reasonable Doubt." In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970)

Even though a practice may be inherently prejudicial, jurors will not necessarily be fully conscious of the effect it will have on their attitude towards the accused. This is especially true when jurors are questioned at the very beginning of the proceedings, at that point, they can only speculate on how they will feel after being exposed to a practice daily over the course of a trial. Especially after viewing inflammatory evidence of any kind.

Less totalitarian alternatives appear to have not been explored. The security measures used were extreme, and under the totality of the circumstances the security measure denied Mr. Lemicy, Due Process, and Equal Protection of the Law.

III.

Mr. Lemicy, wanted to testify, yet being shackled, he didn't know how he would be able to. The judge never informed nor offered advice to Mr. Lemicy, on how he would be able to testify, being shackled. The court didn't even conduct a hearing to see if Mr. Lemicy, knowingly, and voluntarily, waived his right to testify. The court just asked Mr. Lemicy, if he had any more witnesses to call to testify. "... shackles can interfere with a defendant's ability to participate in his own defense, say, by freely choosing whether to take the witness stand on his own behalf." Deck at 631

"It is recognized that permitting a defendant to testify advances both the 'detection of guilt', and the 'protection of innocence' ... There is no rationale justification for prohibiting the sworn testimony of the accused, who above all others may be in a position to meet the prosecution's case." Ferguson v. Georgia, 365 U.S. 570, 573, 582 L. Ed. 2d 783, 81 S. Ct. 756 (1961)

It was a necessity for Mr. Lemicy, to testify, so that the jury would hear a second point of view of what led to these charges, and to introduce newly discovered evidence showing the evidence being altered while in police possession, which would of helped dispute the A.U.S.A., claim that he acted "For the Purpose". At the trial, Mr. Lemicy's situation was not at it's most dire, and he was trying to prove himself innocent in order to avoid losing his liberty, and yet with him being shackled, he was unsure and unaware of how to proceed to take the stand as his last witness. (Appendix C-D)

IV.

The Court of Appeals for the Eighth Circuit, should of been 'troubled' by trial court's failure to make a finding on the record, of the necessity for the ankle shackles inside of the courtroom. Instead the appellate court, stated in it's brief on page 12, that the overwhelming evidence of guilt, that came about at the end of the trial, overrode the Constitutional violation that occurred at the beginning of the trial, and every day that a hearing wasn't conducted. There are some Constitutional rights so basic to a fair trial, that their infraction can never be treated as harmless error.

This logic, that the 'overwhelming evidence', trumps the Constitutional violation is not well founded. Deck v. Missouri, 544 U.S. 622 (2005), doesn't mention nothing about 'overwhelming evidence'. Deck v. Missouri, principle is two folds; (1) the court needs justification for the shackles; and (2) the [government] must prove Beyond a Reasonable Doubt, that the shackling error complained about did not contribute to the verdict obtained. Deck v. Missouri and Chapman v. California, 386 U.S. 18, 24, 17 L. Ed. 2d 205, 87 S. Ct. 824 (1967).

This misinterpretation, this misapplication, shifts the burden from the prosecutor, and excuses their Due Process violation, and place the burden upon the defendant to convince the Court, that the evidence was/is insufficient, and ignores the fact that the defendant was placed in front of the jury in shackles to begin with. Although substantial evidence of a defendant's guilt may not be challenged or explained by the defendant, it does not constitute harmless error for the defendant to be deprived of his Federal Constitutional rights..

During Mr. Lemicy's, trial as a pro-se litigant, Mr. Lemicy, was shackled all three (3) days without justification, and even though, there was a 'privacy screen' around the table where he was sitting, the jurors knew that the reason why he didn't stand up to conduct his opening statement or closing remark, or

even approach any of the witnesses to introduce evidence was because he was shackled, all on account of prospective juror no. 51.

The sitting of the U.S. Marshals next to Mr. Lemicy, were tended to brand him with an unmistakable mark of guilt. Then with him being shackled added to the unmistakable mark of guilt. "A courtroom is a hallowed place where trials must proceed with dignity and not become occasions for entertainment by the participants." Allen 397 U.S. at 352. Mr. Lemicy, was paraded in front of the jury by the measures of the court abusing his discretion.

It is essential to the proper administration of criminal justice that dignity, order, and decorum be the hallmarks of all court proceedings ... The flagrant disregard in the courtroom of elementary standard of proper conduct, should not and cannot be tolerated. Allen at 344-

A faretta hearing wasn't conducted prior to the start of the trial, and the denial of the basic right as a pro-se litigant was over looked. The court denied all of Mr. Lemicy's motions, and yet granted all of the A.U.S.A.'s motions, which put Mr. Lemicy, at an even greater disadvantage. The court denied all of Mr. Lemicy's, objections to the P.S.R., in favor of the government. The abuse of discretion in many flagrant forms, led Mr. Lemicy, to file a judicial complaint (JCP No. 08-25-90011), and a recusal motion of the judge, who so far has refused to voluntarily recuse himself, and that has led Mr. Lemicy to file a mandamus to the appellate court asking that court to order the judge to recuse himself.

Mr. Lemicy, is asking this Court to step in and draw the appellate court and the district court back in line with the precedent of Deck v. Missouri, which the basis is that shackles can not be used during the "guilt phase" of a trial absent a 'case by case determination', and order a new trial to be conducted, The technique's used was an affront to the very dignity and decorum of the judicial proceedings that the judge was suppose to uphold.

With the district court, and the appellate court allowing this type of violation to occur, it is in the interest of justice and last resort to file this Mandamus seeking relief from the blatant violation of a protected Constitutional right.

CONCLUSION

History has known the breakdown of lawful penal authority, and the

perversion of that authority too. In some societies, the solemn power of condemnation has been confined to the caprice of tyrants. Down the corridors of history you will hear the echoes from cries of innocent men/women convicted by irrational or arbitrary procedures.

The Due Process Clause guarantees more than fair process, an the 'liberty' it protects includes more than the absence of physical restraints. The 'Clause' also provides heightened protection against government interference with certain fundamental rights and liberty interest ... in addition to specific freedoms protected by the Bill of Rights. The 'liberty' specially protected by the Due Process Clause, includes court recognized fundamental rights.

This Court said in 'Holbrook' "... our courts, palladiums of libert as they are, cannot be treated disrespectfully with impunity.

The petition for a writ of mandamus should be granted.


Respectfully submitted,

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