12-28-2011

State v. Wright Appellant's Reply Brief Dckt. 38017

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 38017
	)	
v.	)	
	)	
TIMOTHY EUGENE WRIGHT,	)	REPLY BRIEF
	)	
Defendant-Appellant.	)	
	)	

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

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District Judge

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STATEMENT OF THE CASE

Nature of the Case

On appeal, Mr. Wright asserted that his due process rights to a fair trial and the presumption of innocence were violated when the court placed him in restraints and informed the jury about the restraints, and that he was deprived of his due process right to a fair trial when the prosecutor elicited testimony that he invoked his Fourth Amendment right and referred to that invocation in his opening statement and closing argument.

In its Respondent's Brief, the State has argued, with respect to the restraint issue, that Mr. Wright failed to preserve his arguments at trial. As such, the State argues, Mr. Wright must satisfy the fundamental error test announced in *State v. Perry*, 150 Idaho 209 (2010), which the State argues he has failed to do.

This Reply Brief is necessary to demonstrate that Mr. Wright did preserve his arguments concerning the use of restraints at trial, and, therefore, this Court should reject the State's attempt to shift the analysis to one of fundamental error.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Wright's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference.

ISSUE

Did Mr. Wright preserve for appeal his arguments about the use of restraints at trial?

ARGUMENT

Mr. Wright Preserved For Appeal His Arguments About The Use Of Restraints At Trial

In its Respondent's Brief, the State asserts that Mr. Wright's claims of error with respect to the district court's decision to place him in restraints without holding a hearing, alerting the jury to the fact of the restraints, and failing to use the least visible restraints possible were not preserved for appeal. If the claims were not preserved, the State argues that Mr. Wright must satisfy the fundamental error test set forth in *State v. Perry*, 150 Idaho 209 (2010), which he failed to do. (Respondent's Brief, pp.6-12.) Because Mr. Wright objected at trial, thereby preserving his arguments for appeal, the State's argument is without merit.

During a hearing at which Mr. Wright fired his attorney and went *pro se*, the district court announced that it had ordered that Mr. Wright be restrained because of reports from "the Marshal that Mr. Wright has become combative and threatening to the Marshal." Prior to the jury being returned to the courtroom, Mr. Wright requested that the restraints be removed, specifically asking, "May I have these off, sir?" (Tr.Vol.I, p.49, Ls.14-18, p.57, L.7.) Even the State, in its briefing, acknowledges, "Before the jury was brought in Wright asked for removal of the restraints, but the court declined" to grant his request. (Respondent's Brief, p.4.) The State's argument that Mr. Wright failed to object is, therefore, contradicted by the record and its own acknowledgment of the events that occurred below.[1] The State's specific claims that Mr. Wright failed to preserve the three issues surrounding the use of restraints at trial should be rejected for this reason and for the reasons set forth below.

The State's first argument is that the district court's failure to hold a hearing on its decision to restrain him was not preserved below because Mr. Wright failed to object, failed to request a hearing, and did not dispute the district court's stated reasons for restraining him. (Respondent's Brief, pp.7-9.) This argument is unpersuasive.

First, an examination of the hearing at which the district court announced that it had ordered Mr. Wright to be restrained reveals that, at the first logical opportunity to do so, Mr. Wright requested that his restraints be removed. Immediately upon going back on the record, while the jury remained out of the courtroom, the district court announced,

> During our recess I am informed by the Marshal that Mr. Wright has become combative and threatening to the Marshal and I have authorized, as a result of that, that he be restrained and continue to be restrained until further order. I am also informed when Mr. Mallard, who has conferred with Mr. Wright, that he has expressed a desire to discharge Mr. Mallard and to proceed to represent himself in this proceeding, which is his right, if he desires.
>
> Is that correct, Mr. Wright?

(Tr.Vol.I, p.49, Ls.14-23.)

After confirming that Mr. Wright understood that he was seeking to discharge his counsel, the district court immediately launched into a *Faretta*[2] hearing, asking questions solely concerned with Mr. Wright's understanding of his right to be represented by counsel and informing him of the disadvantages of self-representation, before discharging defense counsel from the case. (Tr.Vol.I, p.49, L.24 – p.55, L.12.) Once that portion of the hearing was concluded, the district court asked the State and

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[1] Because Mr. Wright preserved his issues for appeal, he will not address the State's arguments that the district court's rulings did not meet the fundamental error standard.
[2] *See Faretta v. California*, 422 U.S. 806 (1975).

Mr. Wright whether either needed to address anything else before bringing the jury back. Mr. Wright then moved for an opportunity to cross-examine the witness who had testified prior to the hearing. The district court agreed to allow for cross-examination, and asked the bailiff to bring the jury back in, at which point Mr. Wright asked, "May I have these off, sir?" This request was denied. (Tr.Vol.I, p.55, L.13 – p.57, L.13.)

The State's claim that Mr. Wright was given "ample opportunity ... to challenge the evidence that he had been combative and threatening" is contradicted by the record, as discussed above. The district court announced that it had already made its decision, Mr. Wright objected to the district court's decision, and the district court declined to reconsider its decision. It is difficult to imagine a better example of a person, let alone one proceeding *pro se*, doing a better job of preserving an objection to a district court's decision.

The State's brief does not set forth the "magic words" that it appears to believe are necessary to preserve an objection to a district court's decision to place a person in restraints during a jury trial, although, quoting Idaho case law, the State has written, "[I]f 'counsel for the accused desires to object to the defendant being brought before the court in leg restraints, he or she should do so before the jurors arrive or after requesting a hearing outside the presence of the jury.'" (Respondent's Brief, p.7 (quoting *State v. Knutson*, 121 Idaho 101, 105 (Ct. App. 1992).) Again citing to *Knutson*, the State proclaims, "It is the defendant's burden to object prior to being seen by the jury." (Respondent's Brief, p.8 (citing *Knutson* at 105).) Even under the State's reading of the case law on this issue then, Mr. Wright preserved the issue for appellate review.

The State's next claim is that Mr. Wright failed to preserve his claim that it was error for the district court to inform the jury as to the use of restraints. (Respondent's Brief, pp.9-10.) The State makes much of the fact that, aside from his unsuccessful request that the restraints be removed before the jury saw him so restrained, Mr. Wright failed to object or move for a mistrial after the district court informed the jury about the restraints. (Respondent's Brief, p.9.)

A party is not required to continue to object following an adverse ruling on an issue to preserve that issue for appeal. *See Saint Alphonsus Diversified Care, Inc. v. MRI Associates, LLP*, 148 Idaho 479, 494 (2009) ("If the trial court unqualifiedly rules on the admissibility of evidence prior to trial, no further objection is necessary in order to preserve the issue for appeal") (citing *Kirk v. Ford Motor Co.*, 141 Idaho 697 (2005)). Here, Mr. Wright did exactly what *Knutson* requires: he objected prior to the jury being made aware of the fact that he was restrained. It was unnecessary for him to continue to object or to move for a mistrial once the issue had been ruled upon.

Additionally, the State appears to ignore the requirement that restraining a defendant during a jury trial should be done "in a manner that would not be prejudicial." *Knutson* at 106 (citing *State v. Moen*, 94 Idaho 477 (1971)). In *Knutson*, the district court employed methods designed to ensure that the jury was not made aware of the fact that Knutson was restrained, specifically, having him brought into the courtroom through the judge's chambers and placing a "protective covering in front of both counsel tables, so that the jury would not be able to see the [leg] restraints." *Id.*

The State's final argument is that Mr. Wright failed to preserve for appeal his claim that the district court erred by not using the least visible means of restraint (and

that the trial court's decision in this regard did not meet the standard required to find fundamental error). (Respondent's Brief, pp.11-12.) The State's claim is without merit in light of the fact that Mr. Wright objected to the use of the actual restraints that were used, and the district court made no attempt to prevent the jury from learning about the restraints, let alone attempt to use the least visible restraints possible. As the State notes in its argument against his claim that telling the jury about the restraints was improper,

> The record does not indicate that the jury was or would have remained unaware of the restraints. To the contrary, the district court informed the jury informed the jury [sic] of the reason for the restrains [sic] "so there's no question as far as what's going on" (Trial Tr., p.58, Ls.3-6), strongly indicating that the district court was aware that the jury would see the restraints. Thus, there is nothing clear in the record that the court could have avoided any potential prejudice arising from the use of restraints by merely not commenting on them.

(Respondent's Brief, p.10.)

Case law from other jurisdictions cited in Mr. Wright's Appellant's Brief (Appellant's Brief, p.11), and recognized in the State's Respondent's Brief (Respondent's Brief, p.11), hold that a trial court ordering the use of restraints must use the "least visible secure restraint, such as, it is often suggested, leg shackles made invisible to the jury by a curtain at the defense table." *Stephenson v. Wilson*, 619 F.3d 664, 668-69 (7th Cir. 2010) (citing *United States v. Brooks*, 125 F.3d 484 (7th Cir. 1997)). Additionally, as the State recognizes, Idaho law prohibits the use of "any more restraint than is necessary" when bringing a criminal defendant to trial. (Respondent's Brief, p.11 (citing Idaho Code § 19-108 and *State v. Miller*, 131 Idaho 288 (Ct. App. 1998)).)

Because Mr. Wright objected to the use of restraints during his jury trial, he preserved for appellate review all three of his arguments regarding the use of those

restraints. As such, the fundamental error test is not applicable, and the State's arguments that Mr. Wright failed to satisfy the fundamental error test should be rejected.

CONCLUSION

For the reasons set forth herein, and in his Appellant's Brief, Mr. Wright respectfully requests that this Court vacate his conviction and remand this matter for a new trial.

DATED this 28th day of December, 2011.

SPENCER J. HAHN
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 28th day of December, 2011, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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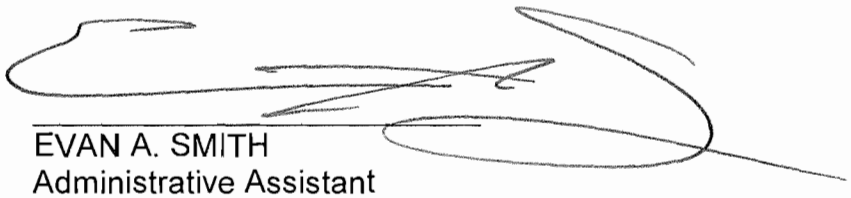

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SJH/eas