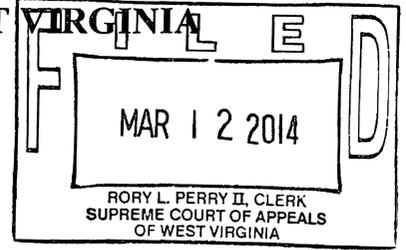


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DOCKET NO. 13-0778



STATE OF WEST VIRGINIA,
RESPONDENT,

V.

CHRISTOPHER D. COX,
PETITIONER.

Appeal from a final order of
the Circuit Court of Fayette
County (12-F-77)

PETITIONER'S REPLY BRIEF

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CASES

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STATUTES

W.Va. Code § 62-8-5 1

W.Va. Code § 62-8-6 1

I. Cox was denied a fair trial when the Court required his witnesses to testify by video.

The Court abused its discretion and denied Cox a fair trial when it ordered five defense witnesses to testify by video from Mount Olive Correctional Center. A.R. 10-14. Despite the State's representations to the contrary, courtroom safety is not the sole determinative factor when considering this issue. The State skirts the fact that there is no statute or rule in West Virginia that allows trial witnesses in a criminal case to appear by video. To the contrary, our statutes require that the trials of inmates be conducted the same as any other trial. *See* W.Va. Code § 62-8-5, 6. Also, video testimony is not the only way to provide courtroom security. Stun belts could have been used to ensure that the defendant's witnesses were allowed to testify in person before the jury. *See, e.g., State v. Youngblood*, 217 W.Va. 535, 543, 618 S.E.2d 544, 552 (2005) (*vacated*).

Further, this Court has made it clear that a live witness in the courtroom, rather than on a television, allows the jury "to obtain the elusive and incommunicable evidence of a witness' deportment while testifying." *State v. Gary F.*, 189 W.Va. 523, 530, 432 S.E.2d 793, 800 (1993). In this case, five defense witnesses testified by video, but all of the State witnesses were allowed to appear in person. This is not a level playing field. By requiring Cox's witnesses to appear by video, the Court sent a tacit message to the jury that his witnesses are dangerous and not to be trusted. *See State v. Allah Jamaal W.*, 209 W.Va. 1, 7, 543 S.E.2d 282, 288 (2000). Because of this, Cox was denied a fair trial when the Court refused to allow his witnesses to appear in person.

II. Cox was denied a fair trial when the Court allowed defense witnesses to testify in shackles.

The Court also abused its discretion and denied Cox a fair trial when it allowed the jury to see Cox's witnesses paraded before the jury in shackles on video from Mount Olive. Fourteen

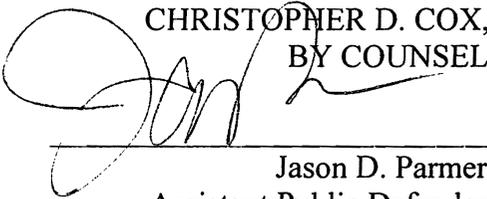
years ago, this Court recognized the “inherent psychological impact on the jury” of a defense witness testifying in handcuffs. *State v. Allah Jamaal W.*, 209 W.Va. 1, 7, 543 S.E.2d 282, 288 (2000). In this case, not only did the witnesses testify in shackles, but they were not even allowed in the courtroom, which magnifies the risk that the jury will discredit their testimony.

The physical appearance of defense witnesses in shackles witnesses is so clearly prejudicial that it was plain error for the Court to allow it. *See* Syllabus Point 7, *State v. Miller*, 194 W.Va. 3, 459 S.E.2d 114 (1995). However, not only did the Court allow it, the Court also abused its discretion when it failed read the jury a cautionary instruction to disregard the defense witnesses’ attire and restraints when assessing the evidence and determining guilt. *See* Syllabus Point 6, *Allah Jamaal W.*

CONCLUSION

Petitioner Cox prays that this Court will find that the trial court committed prejudicial error in this case, reverse Cox’s conviction and remand for a new trial.

CHRISTOPHER D. COX,
BY COUNSEL

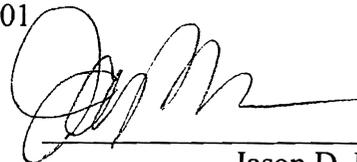


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CERTIFICATE OF SERVICE

I, Jason D. Parmer, hereby certify that I have delivered the foregoing reply brief by first class mail on the 12th day of March, 2014 to:

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A handwritten signature in black ink, appearing to read 'J. Parmer', is written over a horizontal line.

Jason D. Parmer