

**2006-2007 YMCA
TEXAS YOUTH AND GOVERNMENT**

APPEALS CASE

Chelan Lake

Petitioner

v.

State of Texas

Respondent

Case Statements

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THE COURT OF APPEALS
FOR THE FIFTEENTH DISTRICT OF
THE STATE OF TEXAS

CHELAN LAKE, Appellant)))	
V.)	No. CR-112304
)))	
STATE OF TEXAS Appellee)))	

On appeal from the 222nd District Court of Travis County, Texas.

Panel consisting of Justices RHETT, SOPHIA, and CLYDE.

OPINION

Justice RHETT for the majority:

Appellant Chelan Lake is the former girlfriend of Mr. Douglas Furr, a 19 year old paraplegic, who was found dead in his room at a nursing care facility in Quint, Texas. Ms. Lake was charged with manslaughter and promoting a suicide attempt, and after a jury trial on the merits, was convicted of manslaughter and sentenced to two years imprisonment. Ms. Lake appeals her conviction on two points of error. First, Ms. Lake contends that the trial court erred in deciding to keep her in handcuffs for the duration of the trial. Second, Lake complains about certain statements made by the State’s attorney during closing argument. Both of these matters, according to Ms. Lake, constitute reversible error and mandate a new trial in this case. We disagree, and thus affirm the conviction.

Summary of the Facts:

Mr. Douglas Furr, a high school student, sustained severe injuries in a vehicular collision. His cervical spinal cord was severed at the C-7 level, resulting in permanent paralysis from the chest down. After his release from the hospital, Mr. Furr was transferred to Nightingale Nursing Home in Quaint, Texas. During the course of his confinement at the nursing home, Mr. Furr was found dead in his room by Ms. Cher Cicconi, an employee of the nursing home. An autopsy was performed by Dr. Louis Strickland, who attributed the probable cause of the death to an allergic reaction to aspirin.

On the afternoon of his death, Mr. Furr was visited by Ms. Chelan Lake, who dated Mr. Furr prior to the collision. Ms. Lake was subsequently charged with manslaughter in the second degree and promoting a suicide attempt. At trial, the State contended that Ms. Lake assisted Mr. Furr in committing suicide by providing him with aspirin on the day in question. Alternatively, the State argued that Ms. Lake's criminal negligence served as the cause of Mr. Furr's death, thereby constituting manslaughter. In her statement given to the investigating officer, Ms. Lake admitted to carrying aspirin into Mr. Furr's room on the afternoon of his death. However, Ms. Lake denied providing any aspirin to Mr. Furr, who suddenly died in her presence during her visit.

Prior to her trial, Ms. Lake had not posted bail, and thus remained incarcerated at the Travis County Jail awaiting her trial. When the case was called to trial, Ms. Lake was brought to the 311th District Court in the custody of a Travis County sheriff's deputy. Upon Ms. Lake's arrival in the courtroom, the

deputy removed her handcuffs, but remained to supervise Ms. Lake. During pre-trial motions, however, Ms. Lake became agitated when Ms. Furr entered the courtroom. The transcript of the hearing on the pre-trial motions reflects that Ms. Lake began a tirade directed to Ms. Furr. The following is an excerpt from the trial record, with the expletives deleted:

The Court: *Alright, does the Defendant have any pre-trial motion?*

Ms. Lake: *What are you looking at, Bunny?*

Ms. Furr: *A murderer!*

The Court: *Stop it!*

Ms. Lake: *Shut your mouth, Bunny!*

Ms. Furr: *Why don't you shut your [expletive deleted] mouth!*

Ms. Lake: *Why don't you come over here and make me, Bunny!*

The Court: *I'm ordering both of you to simmer down now!*

Ms. Barney [the prosecutor]: *Your honor, Ms. Lake needs to be restrained and gagged during the course of these proceedings. We can't have her outbursts during trial, and it's apparent that Ms. Lake is a highly disturbed individual.*

The Court: *Counselor, I know how to run my own courtroom! Bailiff, please cuff Ms. Lake and get her out of the courtroom so we can get these motions done and get this trial started.*

After this heated exchange, the Court concluded the pre-trial hearing on the parties' respective motions, and then instructed the bailiff to bring Ms. Lake back into the courtroom prior to voir dire. At that point, the trial judge briefly addressed Ms. Lake, as reflected in the transcript:

The Court: *Young lady, I'm hereby instructing you to remain quiet in this courtroom during this trial. We're not going to have any more outbursts like you had this morning. Except when you're testifying, I don't want to hear your voice during this trial. If you have to talk with your lawyers during trial, fine, but I'd better not be able to hear your voice from the bench. Also, I want you to behave yourself, not flying off the handle and trying to attack someone, so I've decided to keep those handcuffs on during trial. Let's go ahead and bring in the jury panel.*

Mr. Andrew [Ms. Lake's attorney]: *Judge, I don't think it's fair to keep the cuffs on. . . .*

The Court: *Counselor, I know how to run my own courtroom! I've made my decision, and let's move on. Bailiff, bring in the jury panel.*

At that point, the parties proceeded with the voir dire examination of the jury panel. During voir dire, no reference was made by either attorney, the Court, or any member of the panel regarding Ms. Lake's handcuffs.

During trial, Ms. Furr testified that her son was not suicidal, and that Ms. Lake made a substantial recovery as a beneficiary from her son's life insurance policy. Ms. Furr also testified that Ms. Lake knew about her son's allergic reaction to aspirin. In her trial testimony, Ms. Lake adamantly denied providing aspirin to Mr. Furr on the day of his death. However, Ms. Lake admittedly carried a bottle of aspirin into his room that day, and consumed two aspirin in Mr. Furr's presence due to a headache. The jury also heard testimony from Dr. Louis Strickland, a staff physician with the nursing home who performed an autopsy on Mr. Furr; Ms. Cher Cicconi, a nurse at the nursing home; Mr. Dudley Columbo, a detective with the Queen Victoria County Sheriff's Department who investigated Mr. Furr's death; Dr. Homer Socrates, an expert witness retained by Ms. Lake; Ms. Cornelia Flake, a certified counselor who worked with the Furr family; Mr.

Faulkes Furr, the father of the decedent; and Ms. Millie Palmer, a resident at the nursing home. The record on appeal fails to demonstrate any outbursts from Ms. Lake during the course of trial.

During closing arguments, the State's attorney gave an impassioned plea for the conviction of Ms. Lake. One portion of the argument raised objections from Ms. Lake's counsel:

Ms. Barney: You've heard the evidence. Now it's your job to hold Ms. Lake accountable for the horrible things she's done. She needs to learn what's right and what's wrong. What will happen if she eventually tries to go after the hundreds of other boys that she's dated?

Mr. Andrew: Judge, I object. This is clearly improper argument, and ..

The Court: Let's move on, counselor.

Ms. Barney: Ladies and gentlemen, just look at her. There's a good reason why she's got those handcuffs on. She's a murderer! Will any of our young men in our community be safe if those handcuffs ever come off?

Mr. Andrew: Objection, your honor. This argument is clearly improper. Would you please instruct...

The Court: Overruled. Mr. Andrew, you got your opportunity to argue your case. Ms. Barney, let's keep it clean. Move on.

After closing arguments, the jury deliberated for one hour prior to reaching a verdict. Ms. Lake was found guilty of the manslaughter charge, but not guilty on the charge of promoting a suicide attempt. Additionally, on the last page of the Court's charge, an unidentified member of the jury wrote the following statement: "We believe this murderer should go back to jail and stay there forever!" Ms. Lake was subsequently sentenced to a prison term of two years.

Issues on Appeal:

In her first point of error, Ms. Lake complains about the trial court's decision to place her into handcuffs during the course of the trial. According to Ms. Lake, the image of her being restrained by handcuffs was highly prejudicial, and violated her constitutional rights to due process under the Fourteenth Amendment of the United States Constitution. Ms. Lake complains that the trial court's error to place her into handcuffs, in all probability, caused the rendition of an improper judgment, thus constituting reversible error under Tex. R. App. P. 44.2. Alternatively, Ms. Lake complains that the "harmless error" rule should not apply in this instance, and as such a new trial should be granted even in the absence of any demonstration that the error probably resulted in an improper judgment.

The issues regarding the shackling of a party during trial appear to be well-settled at this point. Specifically, the trial court has the discretion to determine whether the defendant should remain in handcuffs during the course of the trial. Long v. State, 823 S.W.2d 259, 282 (Tex. Crim. App. 1991). An appellate court will not reverse the trial court's decision in this regard, unless it is demonstrated on appeal that the trial court abused its discretion. Long, 823 S.W.2d at 282. In order to assist the appellate court in this determination, the trial court is required to clearly and affirmatively set forth its reasons on the record for its decision to shackle the defendant. Long, 823 S.W.2d at 282. With regard to civil proceedings, the Texas Supreme Court has recently held that a person's due process rights are not automatically violated by having to appear at

trial in handcuffs. In the Interest of K.R., 63 S.W.3d 796, 797 (Tex. 2001). Even in the event that the trial court erred in its decision to require handcuffs, the appealing party must demonstrate that this error probably caused the rendition of an improper judgment under Tex. R. App. P. 44.1(a). In the Interest of K.R., 63 S.W.3d at 797.

Based upon the foregoing, Ms. Lake is not entitled to reversal of the trial court's judgment on this basis. Given her outburst and threats, the trial court acted within its considerable discretion to require handcuffs on Ms. Lake during the remainder of the proceedings. The record further reflects that the trial court articulated its reasons for this decision, and we decline to "second-guess" that decision based upon the trial judge's personal observations of the events and Ms. Lake's demeanor in the courtroom. The effectiveness of our justice system mandates that trial courts maintain the decorum and dignity of legal proceedings. Trial courts should thus have wide latitude in determining whether restraints should be placed onto parties or witnesses. We will not disturb the ruling of a trial court on this matter in the absence of an abuse of its discretion, and decline to do so in this instance.

Additionally, Ms. Lake has failed to demonstrate that the trial court's decision to restrain her during trial constitutes reversible error under Tex. R. App. P. 44.2. According to Ms. Lake, the hand-written comments on the Court's charge suggest that the jury was unduly influenced by prejudicial effects of the handcuffs and the State's closing argument. However, juries' comments on the Court's charge are generally held to be immaterial in assessing their verdicts on

appeal. See Rice Food Markets, Inc. v. Ramirez, 59 S.W.3d 726, 737 (Tex. App.-Amarillo 2001, n.w.h.). On this particular point, Ms. Lake has not brought forward any relevant authorities to suggest that a reviewing court is permitted to rely upon juries' extraneous comments in assessing harmful error.

We also reject Ms. Lake's contention that harm should simply be presumed when a trial court errs in restraining a party during trial. In both civil and criminal trials, the "harmless error" rule has been applied to instances where handcuffs have remained on a party during the course of a trial. In the Interest of K.R., 63 S.W.3d at 797, 800; see also Long v. State, 823 S.W.2d 259, 283 (Tex. Crim. App. 1991) (although trial court abused discretion in requiring restraints on defendant, the error was harmless). We acknowledge that a criminal defendant enjoys a constitutional presumption of innocence. However, the presumption of innocence must be balanced against the public interest in maintaining civility and order in legal proceedings.

Ms. Lake's remaining point of error concerns certain comments made by Ms. Michelle Barney, the State's attorney, during closing argument. Specifically, Ms. Lake complains about the State's reference to the handcuffs, and to her being a "murderer" and a potential threat to other male acquaintances. According to Ms. Lake, these comments were prejudicial and injected new facts that were not supported by the evidence. We disagree. The remarks regarding "hundreds of other boys" merely constitutes hyperbole, which has long been one of the figurative techniques of oral advocacy. Standard Fire Ins. Co. v. Reese, 584 S.W.2d 835, 838 (Tex. 1979). Additionally, a proper jury argument is not

merely limited to a summation of the evidence, but can include reasonable deductions from the evidence and a plea for law enforcement. Wilson v. State, 938 S.W.2d 57, 59 (Tex. Crim. App. 1996). Ms. Lake has failed to demonstrate how the prosecutor's argument in this instance violated these principles.

Even if the argument was improper, we do not find that the argument constituted harmful error in this instance. The applicable standard of review is whether, in light of the record as a whole, there is a reasonable possibility that the improper argument might have contributed to the conviction. Wilson, 938 S.W.2d at 61. To evaluate any potential harm caused by an improper argument, an appeals court should consider (1) the source of the error, (2) the nature of the error, (3) whether the error was emphasized and its probable collateral implications, (4) the weight that a juror would probably place on the error, and (5) whether declaring the error harmless would encourage the State to repeat it with impunity. Wilson, 938 S.W.2d at 57. In considering the impact of the error on a jury, other relevant factors include the strength of the State's case, and whether the error placed the defendant in a poorer light. Moreno v. State, 858 S.W.2d 453, 466 (Tex. Crim. App. 1993).

Based upon the foregoing, the argument of the prosecutor did not constitute harmful error. First, the prosecutor's argument did not put Ms. Lake in any poorer light than the evidence itself. Her description of Ms. Lake as a "murderer" was a reasonable inference from the evidence, and was also consistent with Ms. Furr's characterization of Ms. Lake. Furthermore, the prosecutor's arguments could also be interpreted as a plea for law enforcement.

Finally, we fail to see how the reference to Ms. Lake's handcuffs could have created any harm, since the record suggests that the handcuffs were plainly visible on Ms. Lake during trial. For these reasons, we cannot agree that the argument of the prosecutor probably resulted in a different verdict in this case.

We affirm the judgment of the trial court below.

DISSENT

Justice CLYDE, dissenting:

I dissent. The majority opinion refuses to acknowledge the extent to which two highly prejudicial aspects of the trial tainted the jury's verdict in this case. While the majority opinion casually dismisses these two matters as harmless error, I cannot similarly ignore the fundamental prejudice posed by the same.

First, I am deeply troubled by the extent to which shackling any party during the course of a trial may deprive that individual of his or her constitutional right to due process. Under the Fourteenth Amendment of the United States Constitution, no State shall "deprive any person of life, liberty, or property, without due process of law." No one can reasonably dispute the inherently prejudicial effect of having a party bound by handcuffs during the entire length of trial: "[E]ven to contemplate such a technique, much less to see it, arouses a feeling that no person should be tried while shackled and gagged except as a last resort." Illinois v. Allen, 397 U.S. 337, 344, 90 S.Ct. 1057, 1061, 25 L.Ed.2d 353 (1970). Moreover, the visual image of handcuffs on any litigant diminishes the fundamental notions of fairness in any legal proceeding. See Illinois, 90 S.Ct. at 1061 (use of shackles on a party during the course of a trial can itself be an affront to the very dignity and decorum of judicial proceedings).

When viewed against these principles, the trial court's decision to restrain Ms. Lake during the course of this trial was clearly an abuse of its discretion. While Ms. Lake's comments during the pre-trial motion hearing were undoubtedly disruptive, one cannot ignore the extent to which her comments were fueled by Ms. Furr's retorts. The record reflects that Ms. Furr used profanity in addressing Ms. Lake, and none of the comments made by Ms. Lake remotely suggest any potential threat of physical altercations that could otherwise justify the use of restraints. Furthermore, the trial court wholly failed to articulate any reasonable basis to justify the use of restraints on Ms. Lake. While the trial judge wanted Ms. Lake to "behave" and not "attack someone," the record fails to demonstrate that Ms. Lake specifically threatened or posed any appreciable physical threat during trial. Under these circumstances, the trial court's decision to restrain Ms. Lake was an abuse of its discretion. See Long v. State, 823 S.W.2d 259, 283 (Tex. Crim. App. 1991) (abuse of discretion to require handcuffs on criminal defendant, when there is no evidence of violence or threatened violence by defendant during trial); see also Marquez v. State, 725 S.W.2d 217, 228-30 (Tex. Crim. App. 1987) (detailing evidence of threats posed by defendant).

The trial court also abused its discretion in failing to attempt any other means to control Ms. Lake prior to ordering handcuffs for the duration of the trial. One such method would have been to order Ms. Lake not to engage in any future outbursts, with the violation of such an order being punishable by contempt. This procedure would have permitted Ms. Lake to appear at trial, without having the prejudicial effects of having shackles displayed in the courtroom. Illinois, 90

S.Ct. at 1062. By failing to attempt any lesser means to control the perceived threat from Ms. Lake, the trial court prematurely injected the prejudicial effect of handcuffs into the trial. Undoubtedly, a trial court should maintain the orderly progress and decorum of the proceedings, but these interests must be balanced against the fundamental rights of the parties involved. Such a balancing of interests is not presently served by allowing broad discretion to the trial court to restrain a given party.

I also cannot accept the majority's view that the improper restraint of a party during trial should be analyzed under the "harmless error" rule. It would be difficult, if not impossible, for any litigant to demonstrate the extent to which the prejudicial images of handcuffs would have in the minds of the jurors. Moreover, "there are some constitutional rights so basic to a fair trial that their infraction can never be treated as harmless error." Chapman v. California, 386 U.S. 18, 23 (1967). While we are bound to follow the precedent established by the Texas Court of Criminal Appeals, this case presents a viable opportunity for that court to re-examine the principles regarding the use of restraints on criminal defendants during trial. This case aptly demonstrates how affording trial courts with broad discretion to shackle defendants fails to adequately protect the fundamental rights of the accused. For merely engaging in a brief exchange of words with Ms. Furr, Ms. Lake was forced to be visually portrayed as a convicted criminal in the eyes of the jury, thereby being stripped of her presumption of innocence during trial. For this reason, I would propose that more stringent standards be imposed on a trial court before deciding to restrain an accused with handcuffs.

Additionally, I would require a new trial in any instance where the trial court errs in its decision to visibly restrain an accused in the presence of the jury.

Reversal of Ms. Lake's conviction is also mandated due to the improper closing argument of the prosecutor, and the trial court's refusal to sustain the objections to the same. Jury argument must be confined to summation of the evidence; reasonable deductions from the evidence; answer to an argument of opposing counsel; or a plea for law enforcement. Wilson v. State, 938 S.W.2d 57, 59 (Tex. Crim. App. 1996). Appellate courts should not hesitate to reverse when the State has departed from one of these areas in its argument, and has engaged in conduct calculated to deny the accused a fair and impartial trial. Wilson, 938 S.W.2d at 59. In attempting to determine whether an improper argument created harmful error, appellate courts are required to focus on the error and its possible impact. Wilson, 938 S.W.2d at 61. I disagree with the majority opinion's reliance upon the purported strength of the State's case in its "harmful error" analysis; under my interpretation of Wilson, the relative strength of the prosecution's case should not play a role in determining the harmful effect of an improper jury argument. See Wilson, 938 S.W.2d at 61, 62 fn. 2.

When viewed against these standards, the State's closing argument was clearly improper and constituted harmful error, requiring a reversal of Ms. Lake's conviction. First, the suggestion that Ms. Lake poses a threat to other male acquaintances was highly inflammatory and without any evidentiary basis. Second, Ms. Barney's repeated reference to "murderer" implied conduct on behalf of Ms. Lake far more egregious than the evidence introduced at trial.

Specifically, a substantial portion of the evidence focused on the fact that Mr. Furr, being depressed about his permanent physical impairment, may have caused his own death, either by his own hand or with the assistance of Ms. Lake. While the jury was permitted to infer that Ms. Lake, either inadvertently or intentionally, may have assisted Mr. Furr in his desire to end his suffering, the contested evidence on this point hardly explains the harsh sentiments of the jury, as reflected by the handwritten statement on the bottom of the charge. While the majority opinion attempts to trivialize the significance of that handwritten comment, I cannot imagine any better proof of the fact that the jury deliberations were tainted by prejudice in this case.

I accordingly dissent from the majority's opinion in this case.

THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS

CHELAN LAKE,)	
Petitioner)	
)	
V.)	No. 06-112304
)	
)	
STATE OF TEXAS)	
Respondent)	

SELECTED CASE LAW

Handcuffs on parties:

Long v. State, 823 S.W.2d 259 (Tex. Crim. App. 1991)

In the Interest of K.R., 63 S.W.3d 796 (Tex. 2001)

In the Interest of K.R., 22 S.W.3d 85 (Tex. App.—Houston [14th Dist.] 2001)

Illinois v. Allen, 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970)

Davis v. State, no. 14-05-00325-CR (Tex. App.—Houston [14th Dist.],
May 14, 2006)

Reversible error:

Tex. R. App. P. 44.1

Improper jury argument:

Wilson v. State, 938 S.W.2d 57 (Tex. Crim. App. 1996)

Standard Fire Ins. Co. v. Reese, 584 S.W.2d 835 (Tex. 1979)

Curtin v. State, no. 13-04-630-CR (Tex. App.—Corpus Christi, Feb. 16, 2006)

*Portions of the above cases that are not directly relevant to the issues in
your case have been deleted.*

