In the

United States Court of Appeals

For the Seventh Circuit

No. 18-1713

RICHARD W. SHIRLEY, JR.,

Petitioner-Appellant,

v.

LIZZIE TEGELS,

Respondent-Appellee.

Appeal from the United States District Court for the
Eastern District of Wisconsin.
No. 2:14-cv-01346-NJ — **Nancy Joseph**, *Magistrate Judge*.

ARGUED SEPTEMBER 28, 2022 — DECIDED MARCH 8, 2023

Before EASTERBROOK, HAMILTON, and BRENNAN, *Circuit Judges*.

BRENNAN, *Circuit Judge*. After a jury trial Richard Shirley was convicted of first-degree reckless homicide. On appeal from the denial of his habeas corpus petition under 28 U.S.C. § 2254, Shirley argues the state trial court erred when it permitted him to be shackled during his testimony, which he says violated his constitutional right to present a complete defense. Because no Supreme Court case clearly establishes that

the decision to shackle a criminal defendant while testifying violates that right, federal postconviction relief here is precluded. We therefore affirm.

I. Background

What began as a friendly encounter between Shirley and Frederick Perry at a Milwaukee gas station turned into a struggle between them to possess a gun. Perry died from multiple gunshot wounds sustained during that fight. In 2008, a Milwaukee jury found Shirley guilty of the first-degree reckless homicide of Perry under Wisconsin Statute § 940.02(1).

Shirley lost part of his left leg from an unrelated injury and uses a prosthetic device below his left knee. Although he can walk, during trial Shirley was placed in a wheelchair with his legs shackled. The record does not give the reason for this physical restraint. At one point Shirley's defense counsel said the decision stemmed from "some really bad policy in the sheriff's department." To prevent the jury from observing the shackles, cloth was draped over both counsel tables.

During voir dire Shirley's restraints caught the attention of one juror. When defense counsel asked the jurors if they believed "Shirley must have done something wrong" merely "because he's sitting here," Juror 34 responded in the affirmative, saying "if he's sitting there in cuffs, he did something." Voir dire continued without further mention of the restraints. After the trial court excused the panel, the prosecutor flagged Juror 34's comment. Defense counsel, after consulting with Shirley and his family, stated he was "comfortable … going forward" with the jury panel if the parties could question Juror 34 individually about his observations.

During that questioning Juror 34 confirmed he had "noticed … cuffs" around Shirley's feet but had not mentioned the restraints to any other jurors. The juror also said his observations did not bias him against Shirley or in favor of the State. The trial court then instructed Juror 34 not to discuss the matter with the other jurors. Shirley and his counsel said they were satisfied with Juror 34's responses. Both parties declined to question other jurors about the shackles or to strike Juror 34 for cause or otherwise. Nothing in the record suggests any other juror saw the restraints during the trial.

The restraints came up again when Shirley took the witness stand. The trial court informed the parties that there remained "an issue with regards to security" on which the court "defer[red] to the sheriff's department." The court said Shirley would "be moved up here prior to the jury coming in" and "secured while in this location." After a discussion off the record, the court noted that Shirley's counsel had "appealed … to a higher authority in the sheriff's department … the sheriff's department policy" of having "defendants restrained." Defense counsel confirmed his desire to preserve Shirley's Fifth and Sixth Amendment objections "with respect to being chained to the floor during the course of this trial." But he did not request accommodations to muffle the noise of the shackles if Shirley moved while on the witness stand.

The jury found Shirley guilty, and he was sentenced to 25 years in prison followed by 10 years of extended supervision. He filed a postconviction motion for a new trial and resentencing in which he raised the issue of the shackling. The trial court denied the motion.

Shirley appealed, arguing that his presumption of innocence was violated because Juror 34 noticed his restraints. He

also contended that being shackled during his testimony inhibited his right to present a complete defense. Shirley asserted that the shackles limited his ability "to approach exhibits, make demonstrations during his testimony and show the jury which leg his prosthesis was on."

The Wisconsin Court of Appeals rejected Shirley's claims. It could not locate an explanation in the record for the restraint decision. But Shirley forfeited his objection by not striking Juror 34, and there was no prejudice from that juror's observations. The state appeals court also could not conclude that the shackles "inhibited [Shirley's] ability to participate in his defense." The record showed Shirley had been able to "direct his counsel's hand to point out specific items on the exhibits" and even "point to certain exhibits himself." He also "had little difficulty communicating" in an "intelligent and articulate" manner from the witness stand. Further, Shirley had not requested accommodations or informed the trial court that his ability to approach the exhibits posed a problem. For these reasons, his ability-to-defend claim was rejected, as was his motion for reconsideration. The Wisconsin Supreme Court denied his petition for review.

Shirley petitioned for habeas relief under 28 U.S.C. § 2254, which the federal district court denied. Like the Wisconsin Court of Appeals, the district court could not discern any reason for restraining Shirley other than references to the sheriff's department policy. After reviewing the record, the district court held that any challenge to Juror 34's observations was procedurally defaulted and that the Wisconsin Court of Appeals did not unreasonably apply clearly established federal law in denying the ability-to-defend claim. Shirley appeals that decision.

II. Analysis

Shirley argues that the state trial court's decision to permit him to be shackled during his testimony violated his constitutional right to present a complete defense. He asserts that the Wisconsin Court of Appeals unreasonably applied clearly established federal law in concluding otherwise. We review the district court's denial of habeas relief de novo. *Hinkle v. Neal*, 51 F.4th 234, 239 (7th Cir. 2022).

The Antiterrorism and Effective Death Penalty Act (AEDPA) bars federal habeas relief for claims "adjudicated on the merits" in state court unless the state court decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1). This deferential standard "reflects the view that habeas corpus is a 'guard against extreme malfunctions in the state criminal justice systems,' not a substitute for ordinary error correction through appeal." *Minnick v. Winkleski*, 15 F.4th 460, 468 (7th Cir. 2021) (quoting *Harrington v. Richter*, 562 U.S. 86, 102–03 (2011)). Thus, habeas relief is precluded unless a petitioner demonstrates that the state court's ruling "was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fair-minded disagreement." *Harrington*, 562 U.S. at 103.

We first address whether Shirley "seeks to apply a rule of law that was clearly established at the time his state-court conviction became final." *Williams v. Taylor*, 529 U.S. 362, 390 (2000); *Yarborough v. Alvarado*, 541 U.S. 652, 660 (2004) ("We begin by determining the relevant clearly established law."). Under AEDPA, clearly established federal law "refers to the holdings, as opposed to the dicta, of [the Supreme] Court's

decisions." *Carey v. Musladin*, 549 U.S. 70, 74 (2006) (quoting *Williams*, 529 U.S. at 412). In other words, clearly established federal law means "the governing legal principle or principles set forth by the Supreme Court at the time the state court renders its decision." *Lockyer v. Andrade*, 538 U.S. 63, 71–72 (2003).

In deciding what law is clearly established, federal courts must not frame Supreme Court holdings at "a high level of generality." *Nevada v. Jackson*, 569 U.S. 505, 512 (2013). Doing so "could transform even the most imaginative extension of existing case law into 'clearly established Federal law.'" *Id.* (citing § 2254(d)(1)). Instead, "courts must reasonably apply the rules 'squarely established' by [the Supreme] Court's holdings to the facts of each case." *White v. Woodall*, 572 U.S. 415, 427 (2014) (quoting *Knowles v. Mirzayance*, 556 U.S. 111, 122 (2009)). Section 2254(d)(1) "does not require state and federal courts to wait for some nearly identical factual pattern before a legal rule must be applied." *Panetti v. Quarterman*, 551 U.S. 930, 953 (2007) (internal quotation marks omitted). But "'if a habeas court must extend a rationale before it can apply to the facts at hand,' then by definition the rationale was not 'clearly established at the time of the state-court decision.'" *Woodall*, 572 U.S. at 426 (2014) (quoting *Yarborough*, 541 U.S. at 666).

Shirley argues that the Wisconsin Court of Appeals unreasonably applied clearly established federal law when it held that his shackling did not inhibit his right to participate in his defense. He contends the restraints kept him from leaving the witness stand, unlike other witnesses, to point out exhibits or provide demonstrations. In support of his petition, Shirley points to various Supreme Court cases recognizing a criminal defendant's constitutional right to participate in his own

defense: *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973); *Crane v. Kentucky*, 476 U.S. 683, 690 (1986); *Rock v. Arkansas*, 483 U.S. 44, 52 (1987); *United States v. Scheffer*, 523 U.S. 303, 308 (1998); *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006). He also relies on the Supreme Court's decision in *Deck v. Missouri*, 544 U.S. 622 (2005), a case addressing the constitutionality of visible restraints. Yet the lack of a clearly established rule of federal law determines Shirley's claim.

No Supreme Court precedent has squarely addressed whether placing a criminal defendant in hidden physical restraints unconstitutionally inhibits that defendant's ability to present a complete defense at trial. In *Chambers*, the Court recognized that criminal defendants have "the right to a fair opportunity to defend against the State's accusations." 410 U.S. at 294. This constitutional guarantee of "a meaningful opportunity to present a complete defense" has its roots "directly in the Due Process Clause of the Fourteenth Amendment [and] in the Compulsory Process or Confrontation clauses of the Sixth Amendment." *Crane*, 476 U.S. at 690 (quoting *California v. Trombetta*, 467 U.S. 479, 485 (1984)). And presenting a complete defense encompasses a defendant's "right to testify" about "his own version of events in his own words." *Rock*, 483 U.S. at 52. But this right "is not unlimited." *Scheffer*, 523 U.S. at 308. So "[s]tate and federal rulemakers have broad latitude under the Constitution to establish rules excluding evidence from criminal trials." *Holmes*, 547 U.S. at 324 (quoting *Scheffer*, 523 U.S. at 308). To not violate constitutional requirements, court rules restricting evidence "may not be arbitrary or disproportionate to the purposes they are designed to serve," *Rock*, 483 U.S. at 56, or "infringe[ ] upon the weighty interest of the accused," *Scheffer*, 523 U.S. at 308.

Cases like *Chambers*, *Crane*, and *Rock* do not speak to, much less clearly establish, when, how, or whether being shackled impedes a defendant's ability to present a complete defense. Rather, the *Chambers* line of cases specifically addresses "when the *exclusion of evidence* violates the right to present a complete defense." *Hinkle*, 51 F.4th at 242 (emphasis added); *see also Kubsch v. Neal*, 838 F.3d 845, 854–58 (7th Cir. 2016) (en banc) (analyzing the Supreme Court's application of *Chambers*). Here, Shirley does not contest the exclusion of any evidence or testimony. Instead, he appeals to these decisions for the general proposition that criminal defendants have a constitutional right to participate in their defense. But "[t]his proposition is far too abstract to establish clearly the specific rule" needed to grant Shirley habeas relief. *Lopez v. Smith*, 574 U.S. 1, 5 (2014). None of these cases address the interplay of physical restraints with a defendant's ability to participate in his own defense.

Shirley also points to the Supreme Court's holding in *Deck*, 544 U.S. 622, and argues that the use of shackles impedes a defendant's ability to participate in his defense. In *Deck*, the Supreme Court held that "the Constitution forbids the use of visible shackles during the penalty phase, as it forbids their use during the guilt phase, *unless* that use is 'justified by an essential state interest' … specific to the defendant on trial." *Id.* at 624 (quoting *Holbrook v. Flynn*, 475 U.S. 560, 568–69 (1986)). The Court reasoned that prohibiting the routine use of visible shackles gave effect to important legal principles, such as helping a defendant "secure a meaningful defense." *Id.* at 631. Visible shackles could, for example, "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" or could "interfere with the accused's ability to

communicate with his lawyer." *Id.* (internal quotation marks omitted). Trial courts must therefore make "individualized security determinations" about the need for visible restraints. *Id.* at 631, 632.

Although Shirley cites *Deck*, he does not rely directly on its holding. *Deck* forbids, subject to exceptions, the use of visible shackles during the guilt and penalty phases of a trial. 544 U.S. at 624. But apart from Juror 34's observation during voir dire, Shirley's restraints were hidden from the jury's view throughout trial. And while no essential state interest was identified for placing him in shackles, Shirley does not challenge that failure on appeal.

Rather, Shirley challenges his ability to present a complete defense due to being restrained. In doing so, Shirley argues that the reason underlying the Court's ruling in *Deck*—that use of visible shackles may impede a defendant's ability to defend himself—is clearly established federal law. Yet the Court's observation that the use of shackles may interfere with a defendant's ability to defend oneself, *Deck*, 544 U.S. at 631, is a reason for its decision—not an independent rule or standard governing shackling in general. For *Deck* to provide Shirley relief would require extending it to a new factual context. Such an extension, by definition, does not constitute "clearly established Federal law," which under § 2254(d)(1) is limited to Supreme Court holdings. *Williams*, 529 U.S. at 365. Shirley's reliance on the Supreme Court's reason underlying the rule in *Deck*, as opposed to its holding, thus falls short.

Given the lack of clearly established Supreme Court precedent on the question presented, "it cannot be said that the state court 'unreasonabl[y] appli[ed] clearly established Federal law.'" *Musladin*, 549 U.S. at 77 (quoting § 2254(d)(1)). The

Supreme Court has not directly decided whether shackling during a criminal defendant's testimony violates the constitutional right to present a complete defense. And "[i]t is not an unreasonable application of clearly established Federal law for a state court to decline to apply a specific legal rule that has not been squarely established by [the Supreme] Court." *Harrington*, 562 U.S. at 101 (quoting *Knowles*, 556 U.S. at 122). The Wisconsin Court of Appeals therefore did not contradict or unreasonably apply clearly established federal law. So we AFFIRM the district court's denial of Shirley's habeas petition.

HAMILTON, *Circuit Judge*, concurring. I join the court's opinion because it correctly applies the high standard of 28 U.S.C. § 2254(d) and because petitioner Shirley and his counsel waived the challenge available regarding Juror 34, who saw the shackles on Shirley.

At the same time, it's troubling, to say the least, that the parties and the courts considering this case have not found in the record any individualized justification for shackling Shirley to a wheelchair during his trial. The shackles appear to have been a matter of routine sheriff's office policy. Shackles can be justified in individual cases, but such routine use of shackles is an invitation for reversible error. *Deck v. Missouri*, 544 U.S. 622, 626–29 (2005); *United States v. Henderson*, 915 F.3d 1127, 1133–41 (7th Cir. 2019) (Hamilton, J., dissenting from denial of supervisory writ of mandamus to block routine use of full restraints on all detained defendants in pretrial hearings in federal district court); *Woods v. Thieret*, 5 F.3d 244, 248 (7th Cir. 1993) (emphasizing judge's personal responsibility for deciding independently about restraints during trials).

The holding of *Deck* prohibits routine use of *visible* shackles. 544 U.S. at 633. As the court's opinion makes clear, we cannot extend that holding in this habeas case from state courts. But the reasoning of *Deck* points in the direction Shirley argues we should go, where trial courts should also worry about *audible* shackles. Shirley argues that he was distracted during his own testimony by trying to hold completely still to avoid the sound of clinking shackles in the courtroom.

Given how recognizable the sound of clinking shackles can be, concealing restraints from view does not necessarily

prevent jurors from knowing that a defendant is shackled. This knowledge (and not through which sense it was acquired) was what the Supreme Court found undermined one of the "three fundamental legal principles" implicated by courtroom shackling. See *Deck*, 544 U.S. at 630–33.