SUPREME COURT OF THE UNITED STATES

No. 04–5293

CARMAN L. DECK, PETITIONER *v.* MISSOURI

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSOURI

[May 23, 2005]

JUSTICE BREYER delivered the opinion of the Court.

We here consider whether shackling a convicted offender during the penalty phase of a capital case violates the Federal Constitution. We hold 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"—such as the interest in courtroom security—specific to the defendant on trial. *Holbrook* v. *Flynn*, 475 U. S. 560, 568–569 (1986); see also *Illinois* v. *Allen*, 397 U. S. 337, 343–344 (1970).

I

In July 1996, petitioner Carman Deck robbed, shot, and killed an elderly couple. In 1998, the State of Missouri tried Deck for the murders and the robbery. At trial, state authorities required Deck to wear leg braces that apparently were not visible to the jury. App. 5; Tr. of Oral Arg. 21, 25, 29. Deck was convicted and sentenced to death. The State Supreme Court upheld Deck's conviction but set aside the sentence. 68 S. W. 3d 418, 432 (2002). The State then held a new sentencing proceeding.

From the first day of the new proceeding, Deck was

shackled with leg irons, handcuffs, and a belly chain. App. 58. Before the jury *voir dire* began, Deck's counsel objected to the shackles. The objection was overruled. *Ibid.;* see also *id.,* at 41–55. During the *voir dire*, Deck's counsel renewed the objection. The objection was again overruled, the court stating that Deck "has been convicted and will remain in legirons and a belly chain." *Id.,* at 58. After the *voir dire,* Deck's counsel once again objected, moving to strike the jury panel "because of the fact that Mr. Deck is shackled in front of the jury and makes them think that he is . . . violent today." *Id.*, at 58–59. The objection was again overruled, the court stating that his "being shackled takes any fear out of their minds." *Id.*, at 59. The penalty phase then proceeded with Deck in shackles. Deck was again sentenced to death. 136 S. W. 3d 481, 485 (Mo. 2004) (en banc).

On appeal, Deck claimed that his shackling violated both Missouri law and the Federal Constitution. The Missouri Supreme Court rejected these claims, writing that there was "no record of the extent of the jury's awareness of the restraints"; there was no "claim that the restraints impeded" Deck "from participating in the proceedings"; and there was "evidence" of "a risk" that Deck "might flee in that he was a repeat offender" who may have "killed his two victims to avoid being returned to custody." *Ibid.* Thus, there was "sufficient evidence in the record to support the trial court's exercise of its discretion" to require shackles, and in any event Deck "has not demonstrated that the outcome of his trial was prejudiced. . . . Neither being viewed in shackles by the venire panel prior to trial, nor being viewed while restrained throughout the entire trial, alone, is proof of prejudice." *Ibid.* The court rejected Deck's other claims of error and affirmed the sentence.

We granted certiorari to review Deck's claim that his shackling violated the Federal Constitution.

II

We first consider whether, as a general matter, the Constitution permits a State to use visible shackles routinely in the guilt phase of a criminal trial. The answer is clear: The law has long forbidden routine use of visible shackles during the guilt phase; it permits a State to shackle a criminal defendant only in the presence of a special need.

This rule has deep roots in the common law. In the 18th century, Blackstone wrote that "it is laid down in our antient books, that, though under an indictment of the highest nature," a defendant "must be brought to the bar without irons, or any manner of shackles or bonds; unless there be evident danger of an escape." 4 W. Blackstone, Commentaries on the Laws of England 317 (1769) (footnote omitted); see also 3 E. Coke, Institutes of the Laws of England *34 ("If felons come in judgement to answer, . . . they shall be out of irons, and all manner of bonds, so that their pain shall not take away any manner of reason, nor them constrain to answer, but at their free will"). Blackstone and other English authorities recognized that the rule did not apply at "the time of arraignment," or like proceedings before the judge. Blackstone, *supra*, at 317; see also *Trial of Christopher Layer*, 16 How. St. Tr. 94, 99 (K. B. 1722). It was meant to protect defendants appearing at trial before a jury. See *King* v. *Waite*, 1 Leach 28, 36, 168 Eng. Rep. 117, 120 (K. B. 1743) ("[B]eing put upon his trial, the Court immediately ordered [the defendant's] fetters to be knocked off").

American courts have traditionally followed Blackstone's "ancient" English rule, while making clear that "in extreme and exceptional cases, where the safe custody of the prisoner and the peace of the tribunal imperatively demand, the manacles may be retained." 1 J. Bishop, New Criminal Procedure §955, p. 573 (4th ed. 1895); see also *id.*, at 572–573 ("[O]ne at the trial should have the unre-

strained use of his reason, and all advantages, to clear his innocence. . . . Our American courts adhere pretty closely to this doctrine" (internal quotation marks omitted)); *State* v. *Roberts*, 86 N. J. Super. 159, 163–165, 206 A. 2d 200, 203 (1965); *French* v. *State*, 377 P. 2d 501, 502–504 (Okla. Crim. App. 1962); *Eaddy* v. *People*, 115 Colo. 488, 490, 174 P. 2d 717, 718 (1946) (en banc); *State* v. *McKay*, 63 Nev. 118, 153–158, 165 P. 2d 389, 405–406 (1946); *Blaine* v. *United States*, 136 F. 2d 284, 285 (CADC 1943) *(per curiam); Blair* v. *Commonwealth*, 171 Ky. 319, 327–329, 188 S. W. 390, 393 (App. 1916); *Hauser* v. *People*, 210 Ill. 258, 264–267, 71 N. E. 416, 421 (1904); *Parker* v. *Territory*, 5 Ariz. 283, 287, 52 P. 361, 363 (1898); *State* v. *Williams*, 18 Wash. 47, 48–50, 50 P. 580, 581 (1897); *Rainey* v. *State*, 20 Tex. Ct. App. 455, 472–473 (1886) (opinion of White, P. J.); *State* v. *Smith*, 11 Ore. 205, 8 P. 343, 343 (1883); *Poe* v. *State*, 78 Tenn. 673, 674–678 (1882); *State* v. *Kring*, 64 Mo. 591, 592 (1877); *People* v. *Harrington*, 42 Cal. 165, 167 (1871); see also F. Wharton, Criminal Pleading and Practice §540*a*, p. 369 (8th ed. 1880); 12 Cyclopedia of Law and Procedure 529 (1904). While these earlier courts disagreed about the degree of discretion to be afforded trial judges, see *post*, at 9–14 (THOMAS, J., dissenting), they settled virtually without exception on a basic rule embodying notions of fundamental fairness: trial courts may not shackle defendants routinely, but only if there is a particular reason to do so.

More recently, this Court has suggested that a version of this rule forms part of the Fifth and Fourteenth Amendments' due process guarantee. Thirty-five years ago, when considering the trial of an unusually obstreperous criminal defendant, the Court held that the Constitution sometimes permitted special measures, including physical restraints. *Allen*, 397 U. S., at 343–344. The Court wrote that "binding and gagging might possibly be the fairest and most reasonable way to handle" such a defendant.

Id., at 344. But the Court immediately added that "even to contemplate such a technique . . . arouses a feeling that no person should be tried while shackled and gagged except as a last resort." *Ibid.*

Sixteen years later, the Court considered a special courtroom security arrangement that involved having uniformed security personnel sit in the first row of the courtroom's spectator section. The Court held that the Constitution allowed the arrangement, stating that the deployment of security personnel during trial is not "the sort of inherently prejudicial practice that, like shackling, should be permitted only where justified by an essential state interest specific to each trial." *Holbrook,* 475 U. S., at 568–569. See also *Estelle* v. *Williams*, 425 U. S. 501, 503, 505 (1976) (making a defendant appear in prison garb poses such a threat to the "fairness of the factfinding process" that it must be justified by an "essential state policy").

Lower courts have treated these statements as setting forth a constitutional standard that embodies Blackstone's rule. Courts and commentators share close to a consensus that, during the guilt phase of a trial, a criminal defendant has a right to remain free of physical restraints that are visible to the jury; that the right has a constitutional dimension; but that the right may be overcome in a particular instance by essential state interests such as physical security, escape prevention, or courtroom decorum. See, *e.g.*, *Dyas* v. *Poole*, 309 F. 3d 586, 588–589 (CA9 2002) *(per curiam); Harrell* v. *Israel*, 672 F. 2d 632, 635 (CA7 1982) *(per curiam); State* v. *Herrick*, 324 Mont. 76, 78–82, 101 P. 3d 755, 757–759 (2004); *Hill* v. *Commonwealth*, 125 S. W. 3d 221, 233–234 (Ky. 2004); *State* v. *Turner*, 143 Wash. 2d 715, 723–727, 23 P. 3d 499, 504–505 (2001) (en banc); *Myers* v. *State*, 2000 OK CR 25, ¶19, 17 P. 3d 1021, 1033; *State* v. *Shoen*, 598 N. W. 2d 370, 374–377 (Minn. 1999); *Lovell* v. *State*, 347 Md. 623, 635–645, 702 A. 2d

261, 268–272 (1997); *People* v. *Jackson*, 14 Cal. App. 4th 1818, 1822–1830, 18 Cal. Rptr. 2d 586, 588–594 (1993); *Cooks* v. *State*, 844 S. W. 2d 697, 722 (Tex. Crim. App. 1992); *State* v. *Tweedy*, 219 Conn. 489, 504–508, 594 A. 2d 906, 914–915 (1991); *State* v. *Crawford*, 99 Idaho 87, 93–98, 577 P. 2d 1135, 1141–1146 (1978); *People* v. *Brown*, 45 Ill. App. 3d 24, 26–28, 358 N. E. 2d 1362, 1363–1364 (1977); *State* v. *Tolley*, 290 N. C. 349, 362–371, 226 S. E. 2d 353, 365–369 (1976); see also 21A Am. Jur. 2d, Criminal Law §§1016, 1019 (1998); see generally J. Krauskopf, Physical Restraint of the Defendant in the Courtroom, 15 St. Louis U. L. J. 351 (1970–1971); ABA Standards for Criminal Justice: Discovery and Trial by Jury 15–3.2, pp. 188–191 (3d ed. 1996).

Lower courts have disagreed about the specific procedural steps a trial court must take prior to shackling, about the amount and type of evidence needed to justify restraints, and about what forms of prejudice might warrant a new trial, but they have not questioned the basic principle. They have emphasized the importance of preserving trial court discretion (reversing only in cases of clear abuse), but they have applied the limits on that discretion described in *Holbrook*, *Allen*, and the early English cases. In light of this precedent, and of a lower court consensus disapproving routine shackling dating back to the 19th century, it is clear that this Court's prior statements gave voice to a principle deeply embedded in the law. We now conclude that those statements identify a basic element of the "due process of law" protected by the Federal Constitution. Thus, the Fifth and Fourteenth Amendments prohibit the use of physical restraints visible to the jury absent a trial court determination, in the exercise of its discretion, that they are justified by a state interest specific to a particular trial. Such a determination may of course take into account the factors that courts have traditionally relied on in gauging potential security

problems and the risk of escape at trial.

III

We here consider shackling not during the guilt phase of an ordinary criminal trial, but during the punishment phase of a capital case. And we must decide whether that change of circumstance makes a constitutional difference. To do so, we examine the reasons that motivate the guilt-phase constitutional rule and determine whether they apply with similar force in this context.

A

Judicial hostility to shackling may once primarily have reflected concern for the suffering—the "tortures" and "torments"—that "very painful" chains could cause. Krauskopf, *supra*, at 351, 353 (internal quotation marks omitted); see also *Riggins* v. *Nevada*, 504 U. S. 127, 154, n. 4 (1992) (THOMAS, J., dissenting) (citing English cases curbing the use of restraints). More recently, this Court's opinions have not stressed the need to prevent physical suffering (for not all modern physical restraints are painful). Instead they have emphasized the importance of giving effect to three fundamental legal principles.

First, the criminal process presumes that the defendant is innocent until proved guilty. *Coffin* v. *United States*, 156 U. S. 432, 453 (1895) (presumption of innocence "lies at the foundation of the administration of our criminal law"). Visible shackling undermines the presumption of innocence and the related fairness of the factfinding process. Cf. *Estelle*, *supra,* at 503. It suggests to the jury that the justice system itself sees a "need to separate a defendant from the community at large." *Holbrook*, *supra,* at 569; cf. *State* v. *Roberts*, 86 N. J. Super., at 162, 206 A. 2d, at 202 ("[A] defendant 'ought not be brought to the Bar in a contumelious Manner; as with his Hands tied together, or any other Mark of Ignominy and Reproach . . . unless

there be some Danger of a Rescous [rescue] or Escape'" (quoting 2 W. Hawkins, Pleas of the Crown, ch. 28, §1, p. 308 (1716–1721) (section on arraignments))).

Second, the Constitution, in order to help the accused secure a meaningful defense, provides him with a right to counsel. See, *e.g.*, Amdt. 6; *Gideon* v. *Wainwright*, 372 U. S. 335, 340–341 (1963). The use of physical restraints diminishes that right. Shackles can interfere with the accused's "ability to communicate" with his lawyer. *Allen*, 397 U. S., at 344. Indeed, they 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. Cf. *Cranburne's Case*, 13 How. St. Tr. 222 (K. B. 1696) ("Look you, keeper, you should take off the prisoners irons when they are at the bar, for they should stand at their ease when they are tried" (footnote omitted)); *People* v. *Harrington*, 42 Cal., at 168 (shackles "impos[e] physical burdens, pains, and restraints . . . , . . . ten[d] to confuse and embarrass" defendants' "mental faculties," and thereby tend "materially to abridge and prejudicially affect his constitutional rights").

Third, judges must seek to maintain a judicial process that is a dignified process. The courtroom's formal dignity, which includes the respectful treatment of defendants, reflects the importance of the matter at issue, guilt or innocence, and the gravity with which Americans consider any deprivation of an individual's liberty through criminal punishment. And it reflects a seriousness of purpose that helps to explain the judicial system's power to inspire the confidence and to affect the behavior of a general public whose demands for justice our courts seek to serve. The routine use of shackles in the presence of juries would undermine these symbolic yet concrete objectives. As this Court has said, the use of shackles at trial "affront[s]" the "dignity and decorum of judicial proceedings that the judge is seeking to uphold." *Allen*, *supra,* at

344; see also *Trial of Christopher Layer*, 16 How. St. Tr., at 99 (statement of Mr. Hungerford) ("[T]o have a man plead for his life" in shackles before "a court of justice, the highest in the kingdom for criminal matters, where the king himself is supposed to be personally present" undermines the "dignity of the Court").

There will be cases, of course, where these perils of shackling are unavoidable. See *Allen*, *supra,* at 344. We do not underestimate the need to restrain dangerous defendants to prevent courtroom attacks, or the need to give trial courts latitude in making individualized security determinations. We are mindful of the tragedy that can result if judges are not able to protect themselves and their courtrooms. But given their prejudicial effect, due process does not permit the use of visible restraints if the trial court has not taken account of the circumstances of the particular case.

B

The considerations that militate against the routine use of visible shackles during the guilt phase of a criminal trial apply with like force to penalty proceedings in capital cases. This is obviously so in respect to the latter two considerations mentioned, securing a meaningful defense and maintaining dignified proceedings. It is less obviously so in respect to the first consideration mentioned, for the defendant's conviction means that the presumption of innocence no longer applies. Hence shackles do not undermine the jury's effort to apply that presumption.

Nonetheless, shackles at the penalty phase threaten related concerns. Although the jury is no longer deciding between guilt and innocence, it is deciding between life and death. That decision, given the "'severity'" and "'finality'" of the sanction, is no less important than the decision about guilt. *Monge* v. *California*, 524 U. S. 721, 732 (1998) (quoting *Gardner* v. *Florida*, 430 U. S. 349, 357

(1977)).

Neither is accuracy in making that decision any less critical. The Court has stressed the "acute need" for reliable decisionmaking when the death penalty is at issue. *Monge, supra,* at 732 (citing *Lockett* v. *Ohio*, 438 U. S. 586, 604 (1978) (plurality opinion)). The appearance of the offender during the penalty phase in shackles, however, almost inevitably implies to a jury, as a matter of common sense, that court authorities consider the offender a danger to the community—often a statutory aggravator and nearly always a relevant factor in jury decisionmaking, even where the State does not specifically argue the point. Cf. Brief for Respondent 25–27. It also almost inevitably affects adversely the jury's perception of the character of the defendant. See *Zant* v. *Stephens*, 462 U. S. 862, 900 (1983) (REHNQUIST, J., concurring in judgment) (character and propensities of the defendant are part of a "unique, individualized judgment regarding the punishment that a particular person deserves"). And it thereby inevitably undermines the jury's ability to weigh accurately all relevant considerations—considerations that are often unquantifiable and elusive—when it determines whether a defendant deserves death. In these ways, the use of shackles can be a "thumb [on] death's side of the scale." *Sochor* v. *Florida*, 504 U. S. 527, 532 (1992) (internal quotation marks omitted); see also *Riggins,* 504 U. S., at 142 (KENNEDY, J., concurring) (through control of a defendant's appearance, the State can exert a "powerful influence on the outcome of the trial").

Given the presence of similarly weighty considerations, we must conclude that courts cannot routinely place defendants in shackles or other physical restraints visible to the jury during the penalty phase of a capital proceeding. The constitutional requirement, however, is not absolute. It permits a judge, in the exercise of his or her discretion, to take account of special circumstances, including secu-

rity concerns, that may call for shackling. In so doing, it accommodates the important need to protect the courtroom and its occupants. But any such determination must be case specific; that is to say, it should reflect particular concerns, say special security needs or escape risks, related to the defendant on trial.

IV

Missouri claims that the decision of its high court meets the Constitution's requirements in this case. It argues that the Missouri Supreme Court properly found: (1) that the record lacks evidence that the jury saw the restraints; (2) that the trial court acted within its discretion; and, in any event, (3) that the defendant suffered no prejudice. We find these arguments unconvincing.

The first argument is inconsistent with the record in this case, which makes clear that the jury was aware of the shackles. See App. 58–59 (Deck's attorney stated on the record that "Mr. Deck [was] shackled *in front of the jury*") (emphasis added); *id.,* at 59 (trial court responded that "him being shackled takes any fear out of their minds"). The argument also overstates the Missouri Supreme Court's holding. The court said, "[T]rial counsel made no record *of the extent* of the jury's awareness of the restraints throughout the penalty phase, and Appellant does not claim that the restraints impeded him from participating in the proceedings." 136 S. W. 3d, at 485 (emphasis added). This statement does not suggest that the jury was unaware of the restraints. Rather, it refers to the degree of the jury's awareness, and hence to the kinds of prejudice that might have occurred.

The second argument—that the trial court acted within its discretion—founders on the record's failure to indicate that the trial judge saw the matter as one calling for discretion. The record contains no formal or informal findings. Cf. *supra*, at 9 (requiring a case-by-case deter-

mination). The judge did not refer to a risk of escape—a risk the State has raised in this Court, see Tr. of Oral Arg. 36–37—or a threat to courtroom security. Rather, he gave as his reason for imposing the shackles the fact that Deck already "has been convicted." App. 58. While he also said that the shackles would "take any fear out of" the juror's "minds," he nowhere explained any special reason for fear. *Id.*, at 59. Nor did he explain why, if shackles were necessary, he chose not to provide for shackles that the jury could not see—apparently the arrangement used at trial. If there is an exceptional case where the record itself makes clear that there are indisputably good reasons for shackling, it is not this one.

The third argument fails to take account of this Court's statement in *Holbrook* that shackling is "inherently prejudicial." 475 U. S., at 568. That statement is rooted in our belief that the practice will often have negative effects, but—like "the consequences of compelling a defendant to wear prison clothing" or of forcing him to stand trial while medicated—those effects "cannot be shown from a trial transcript." *Riggins*, *supra,* at 137. Thus, where a court, without adequate justification, orders the defendant to wear shackles that will be seen by the jury, the defendant need not demonstrate actual prejudice to make out a due process violation. The State must prove "beyond a reasonable doubt that the [shackling] error complained of did not contribute to the verdict obtained." *Chapman* v. *California*, 386 U. S. 18, 24 (1967).

V

For these reasons, the judgment of the Missouri Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.