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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

RHONDA JEAN DYAS,)
)
) Petitioner,) Superior Court No.
) (Originally No. CR-36149)
)
) On Habeas Corpus.)
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PETITION FOR WRIT OF HABEAS CORPUS
VERIFICATION
MEMORANDUM OF POINTS AND AUTHORITIES

TABLE OF CONTENTS

1

2 Page

3

4 PETITION FOR WRIT OF HABEAS CORPUS 1

5 I. INTRODUCTION 1

6 II. STATEMENT OF FACTS 2

7 A. The Crime 2

8 B. The Trial 3

9 C. Findings of the Court of Appeal 7

10 III. CLAIMS FOR RELIEF 8

11 IV. PRAYER FOR RELIEF 8

12 VERIFICATION 10

13 MEMORANDUM OF POINTS AND AUTHORITIES 11

14 I. MS. DYAS' RIGHTS TO A FAIR TRIAL AND TO DUE PROCESS OF LAW
15 WERE VIOLATED WHEN SHE WAS SHACKLED THROUGHOUT HER
16 TRIAL AND BROUGHT SHACKLED BEFORE JURORS IN THE HALLWAY
17 OF THE COURTHOUSE 11

18 A. The Court of Appeals Found that Shackling Rhonda Dyas During Her Trial
19 was an Abuse of Discretion 11

20 B. Jurors Saw Rhonda Dyas' Shackles and the Shackling Therefore Undermined
21 Her Presumption of Innocence and Denied Her Due Process 12

22 1. Shackling Rhonda Dyas Undermined Her Presumption of Innocence
23 Before the Jury 12

24 a. Jurors Saw Ms. Dyas in Shackles 12

25 b. The Jury's View of Rhonda Dyas in Shackles was Neither Brief
26 Nor Inadvertent and the Court Took no Curative Measures to
27 Cancel the Effect of Seeing Rhonda Dyas in Shackles 15

28 2. The Shackles Interfered with Rhonda Dyas' Ability to Concentrate on
Her Trial, Assist in Her Defense and Caused Her Significant Physical
and Emotional Torment 17

C. Shackling Rhonda Dyas both Inside and Outside the Courtroom Undermined
Her Presumption of Innocence and, Therefore, the Error is Reversible Per Se 18

D. The Error Resulting from Shackling Rhonda Dyas Before the Jury was not
Harmless Beyond a Reasonable Doubt and, Thus, Caused her Prejudice 19

1. The Jury's Opportunity to View Rhonda Dyas in Shackles was
Extensive and, Thus, the Proper Standard is the Chapman Standard 19

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4
5
6
7
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18
19
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21
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23
24
25
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27
28

2.	The Error of Shackling Rhonda Dyas was not Harmless Beyond a Reasonable Doubt	20
II.	MS. DYAS' RIGHTS TO A FAIR TRIAL AND TO DUE PROCESS OF LAW WERE VIOLATED WHEN WITNESSES APPEARING ON HER BEHALF WERE FORCED TO TESTIFY BEFORE THE JURY IN CHAINS AND PRISON CLOTHES	22
III.	AT A MINIMUM, PETITIONER SHOULD BE AFFORDED AN OPPORTUNITY TO HAVE AN EVIDENTIARY HEARING WHERE FORMER JURORS MAY BE CALLED AND EXAMINED REGARDING THEIR OBSERVATIONS OF PETITIONER IN SHACKLES BOTH INSIDE AND OUTSIDE THE COURTROOM.....	24
	CONCLUSION	25

1 **TABLE OF AUTHORITIES**

2 Page(s)

3 Cases:

4 Arizona v. Fulminante, 499 U.S. 279 (1991) 1, 18, 19

5 Chapman v. California, 386 U.S. 18 (1967) 19

6 Cox v. Louisiana, 379 U.S. 559 (1965) 15

7 Estelle v. Williams, 425 U.S. 501 (1976) 12, 18

8 Holbrook v. Flynn, 475 U.S. 560 (1986) 11, 12

9 Illinois v. Allen, 397 U.S. 337 (1970) 11

10 Jones v. Meyer, 899 F.2d 883 (9th Cir.), cert. denied,
498 U.S. 832 (1990) 11, 13

11 Kennedy v. Cardwell, 487 F.2d 101 (6th Cir.), cert.
12 denied sub nom., Kennedy v. Gray, 416 U.S. 959 (1973) 11, 12, 22

13 Norris v. Risley, 878 F.2d 1178 (9th Cir. 1989) 14, 15

14 People v. Cardenas, 31 Cal.3d 897 (1982) 21

15 People v. Ceniceros, 26 Cal. App. 4th 266 (5th App. Dist. 1994) 19, 22, 23

16 People v. Duran, 16 Cal. 3d 282 (1976) 11, 14, 15, 21-23

17 People v. Givan, 4 Cal. App. 4th 1107 (2d App. Dist. 1992) 20

18 People v. Jackson, 14 Cal. App. 4th 1818 (4th App. Dist. 1993) 19, 20

19 People v. Jacla, 77 Cal. App. 3d 878 (1st App. Dist. 1978) 11, 19

20 People v. Pena, 7 Cal. App. 4th 1294 (2d App. Dist. 1992) 21

21 People v. Rich, 45 Cal. 3d 1036 (1988), cert. denied, 488 U.S. 1051 (1989) 14-16

22 People v. Romero, 8 Cal. 4th 728 (1994) 24

23 People v. Taylor, 31 Cal. 3d 488 (1982) 21

24 People v. Tuilaepa, 4 Cal. 4th 569 (1992) 21

25 People v. Valenzuela, 151 Cal. App. 3d 180 (3d App. Dist. 1985) 20, 22, 23

26 People v. Watson, 46 Cal. 2d 818 (1956) 20

27 Rideau v. Louisiana, 373 U.S. 723 (1963) 15

1 Spain v. Rushen, 883 F.2d 712 (9th Cir. 1989), cert. denied,
2 495 U.S. 910 (1990) 12,
3 13, 17, 18

3 Sullivan v. Louisiana, 508 U.S. 275 (1993) 18, 20

4 Taylor v. Kentucky, 436 U.S. 478 (1978) 12

5 United States v. Haliburton, 870 F.2d 557 (9th Cir.), cert. denied,
6 492 U.S. 910 (1989) 15, 16

7 Wilson v. McCarthy, 770 F.2d 1482 (9th Cir. 1985) 15, 16

8 Constitutional Provisions:

9 Fourteenth Amendment to the United States Constitution

10 Due Process Clause 8, 12, 18

11 Statutes:

12 Cal. Penal Code § 1473 1

13 Cal. Penal Code § 1484 8, 24

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1 **PETITION FOR WRIT OF HABEAS CORPUS**

2 I. INTRODUCTION

3 1. Petitioner, Rhonda Jean Dyas, is unlawfully incarcerated at the California Institute for
4 Women in Frontera, California, by her custodian, Warden Susan Poole.

5 2. Petitioner is serving a sentence of 25 years to life pursuant to a conviction of first degree
6 murder imposed by the Honorable Robert D. Macomber on June 18, 1991. Petitioner's sentence of
7 four years for robbery was stayed by the Court of Appeals. (See Exhibit #1: Unpublished Opinion of
8 the Court of Appeal, pp. 18-20).

9 3. Petitioner's convictions were affirmed by the Fourth District Court of Appeal, Division
10 Two, in an unpublished opinion on January 12, 1993. (Superior Court No. CR-36149; Court of
11 Appeal No. E009678). The petition for review was denied by the California Supreme Court on April
12 15, 1993. (Supreme Court No. S031250).

13 4. Petitioner has no other plain, speedy, or adequate remedy at law, since this petition
14 raises issues based largely upon facts outside the record of the direct appeal. Thus, petitioner brings
15 this petition pursuant to Cal. Penal Code § 1473.

16 5. The error alleged in petitioner's trial is of Constitutional magnitude and resulted in a trial
17 that was so fundamentally unfair that it cannot be said that, absent the error, a reasonable jury would
18 have convicted the accused. Furthermore, under the standard set forth by the United States Supreme
19 Court in Arizona v. Fulminante, 499 U.S. 279 (1991), the error infected the entire trial such that
20 analyzing what a hypothetical jury would have done absent the error is impossible.

21 6. The accompanying memorandum of points and authorities and exhibits are made part of
22 this petition by reference as though fully set forth herein. The court is requested to take judicial notice
23 of the files and records of People v. Dyas (Riverside Superior Ct. No. CR-36149; Court of Appeal
24 No. E009678).

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1 II. STATEMENT OF FACTS

2 A. The Crime

3 7. On May 1, 1989, Connie Scribner ("Scribner") came to the Dyas residence, where
4 Petitioner, Rhonda Dyas, lived with her former husband, Willie Dyas, and her daughter, saying that she
5 had some amphetamines or cocaine to sell. (See Exhibit #4: Reporter's Transcript of Trial, ("RT"),
6 255).¹ Also at the house when Scribner arrived were Plummer Williams, Jr. ("Williams"), a friend of
7 Willie Dyas', and his girlfriend Tina Boyd ("Boyd"). (RT 50, 57, 62).

8 8. The remainder of the testimony concerning events at the Dyas residence prior to
9 Scribner's death is in dispute.

10 9. According to testimony at trial by Willie Dyas, at some point, Willie Dyas and Williams
11 discussed robbing Scribner of money and drugs she had on her person. (RT 250, 295). Later,
12 everyone went into the back bedroom of the Dyas residence. (RT 252-53). Willie Dyas purchased
13 \$12 worth of cocaine from Scribner and began shooting up. (RT 256). Rhonda Dyas left the back
14 bedroom to care for her baby. (RT 252). Willie Dyas and Williams decided to rob Scribner. (RT
15 250). Willie Dyas choked Scribner with a karate belt and hammer. (RT 257). Williams also choked
16 her with a string. (RT 250). Willie Dyas hit Scribner with a hammer while Williams held her down.
17 (RT 250). Williams tied up Scribner. (RT 256). Williams pulled down Scribner's sweatpants and
18 found the money in her pants. (RT 256). Willie Dyas and Williams took an hour to kill Scribner. (RT
19 261). Willie Dyas testified that Rhonda Dyas was not in the back bedroom when the murder and
20 robbery occurred. (RT 252). At some point Rhonda Dyas looked inside the bedroom but Willie Dyas
21 told her to get out or the same thing would happen to her. (RT 285, 288). Willie Dyas testified that
22 Boyd went through Scribner's duffel bag. (RT 288).

23 10. According to the testimony of Tina Boyd, everyone but Boyd was in the back
24 bedroom. (RT 62) Boyd remained behind to take care of Rhonda and Willie Dyas' daughter. (RT 63)
25 Upon hearing noises from the back bedroom, Boyd went towards the bedroom where Rhonda Dyas

26 _____
27 ¹The full trial transcript will be filed with the Court shortly. Counsel's copy of the transcript is not
28 complete. Counsel has reviewed the complete transcript at the clerk's office of the Court of Appeal.
Counsel is currently arranging to obtain copies of the missing portions. The complete transcript will be
filed once those copies are obtained.

1 was standing near the doorway. (RT 64-65) When Boyd asked what was happening, Rhonda Dyas
2 told her not to worry and to go back and sit down. (RT 65) Later, Rhonda Dyas came from the
3 bedroom with a black duffel bag. (RT 76) She and Williams went through it. (RT 77-78) The bag
4 belonged to Scribner. (RT 78-79) Boyd went to Williams because she wanted to leave. Williams told
5 Boyd that they found the money. (RT 83) As Boyd got ready to leave, she asked Rhonda Dyas if
6 Willie Dyas would let Scribner go now that he had the money. (RT 87). Rhonda Dyas allegedly told
7 her that Willie Dyas was not going to let Scribner go because she was a snitch. (RT 87). Rhonda
8 Dyas is also alleged to have told Boyd not to tell anyone. (RT 87).

9 11. The next day, May 2, Williams called his parole officer, Arthur Martinez, to report that
10 he had witnessed a homicide and gave the address of the Dyas residence. (RT 312-13, 316-17).

11 12. David Madden, a detective, went to the Dyas residence to follow up on a report that
12 there was a dead body at the home. (RT 17-18). During a search of the Dyas residence, Det.
13 Madden found Scribner's body in the back bedroom. (RT 22-23).

14 13. Willie Dyas, Plummer Williams and Rhonda Dyas were arrested and charged with the
15 murder and robbery of Connie Scribner. Willie Dyas pleaded guilty to first degree murder and was
16 sentenced to life in prison without the possibility of parole. (RT 255).

17 B. The Trial

18 14. Rhonda Dyas was tried in Riverside County in Department Seven of the Riverside
19 Country Courthouse with her co-defendant, Plummer Williams, Jr. The trial was before the Hon.
20 Robert D. Macomber. The trial began on April 15, 1991 and lasted through April 23, 1991. On May
21 2, 1991, Petitioner Rhonda Dyas was found guilty of violating California Penal Code Sections 187 and
22 211. She was sentenced to 25 years to life for the conviction of first degree murder and given a
23 concurrent sentence of 4 years for the robbery. The robbery sentence was subsequently stayed by the
24 Court of Appeal.

25 15. Rhonda Dyas was charged and the prosecution proceeded under a theory of felony
26 murder, alleging that she was involved in, or aided and abetted, the robbery of Scribner which resulted
27 in Scribner's death. (RT 2-7, 709-713). There was no claim that Rhonda Dyas directly participated in
28 the actual killing of Scribner. Id.

1 16. Rhonda Dyas has consistently maintained that she was not involved in the murder or
2 robbery of Scribner and that she is innocent of all charges.

3 17. Rhonda Dyas did not testify at her trial. (RT Witness Index). Willie Dyas and Boyd
4 did testify at the trial. (RT 49-140, 248-310). The testimony was in substantial conflict as to Rhonda
5 Dyas' knowledge of and assistance in the robbery. Id. This was the crucial issue necessary to secure a
6 murder conviction of Rhonda Dyas under a theory of felony murder. (RT 709-713).

7 18. Willie Dyas was initially scheduled to be called by the defense to testify for Rhonda
8 Dyas. (See Exhibit #2: Declaration of Frank Stanton Peasley, Paragraph #10). However, before he
9 could be called as part of the defense, the prosecution called him as part of their case in chief. (Id.)

10 19. Throughout her trial, Rhonda Dyas was shackled at the ankles while in court. (Id. at
11 Paragraph #3) At the beginning of the trial, Rhonda Dyas' attorney requested that her shackles be
12 removed. (See April 15-16, Reporter's Transcript of Pre-Trial Proceedings, 28) The request was
13 denied. The trial judge stated that given the severity of the charges against the accused, he believed that
14 it was appropriate that she be shackled throughout the trial. (4/15-16 RT 30-31)

15 20. Rhonda Dyas had no history of violence or previous escapes. She had not indicated by
16 words or action any intention to disrupt the proceedings or attempt to escape while in the courthouse.

17 21. At the time of her trial, Rhonda Dyas was housed on the sixth floor of the new
18 Riverside County Jail. The new jail is located across the street from the old jail, which connects to the
19 Courthouse where Rhonda Dyas and Williams were tried.

20 22. Each day of her trial, Rhonda Dyas was brought shackled at the ankles, waist and
21 wrists across the street to the old jail, and through the old jail entrance to the courthouse. She was
22 shackled to other prisoners with court appearances on that given day. Some of these prisoners were
23 dressed in jail clothes.

24 23. The group of shackled prisoners was brought to the courthouse and to individual
25 courtrooms via a long central hallway in the courthouse. The hallway was the main access to
26 courtrooms in the courthouse and consequently, was used by everyone with business in the courthouse,
27 including witnesses, attorneys, the general public and jurors. (Exhibit #2, Paragraph #5-7; Exhibit #3:
28 Declaration of Judy A. McCollin, Paragraph #4, 9)

1 24. As the group of shackled inmates was brought down the hallway, the chains they were
2 wearing made a great deal of noise. Officers would ask people standing in the hallway to step to the
3 sides of the hallway to make room for the group of inmates to proceed down the center. (Exhibit #3,
4 Paragraph #4)

5 25. At the door to each courtroom, the group would stop. Prisoners with appearances in
6 that particular courtroom would be unchained from the rest of the group and escorted into the
7 courtroom. The group would then proceed down the hallway to the next courtroom where the process
8 was once again repeated. When prisoners were unshackled from the rest of the group, the chains that
9 bound them to the group would clank against the hard marble floor of the courthouse hallway.

10 26. The hallway was lined with benches where people awaiting access to the courtrooms
11 would sit until they were allowed to enter the courtroom. Often jurors would wait on these benches
12 prior to being allowed to enter the courtroom where they were serving. (Exhibit #2, Paragraphs #7, 8;
13 Exhibit #3, Paragraph #7)

14 27. Throughout the duration of her trial, Rhonda Dyas was brought into the courthouse and
15 to her courtroom in this fashion. The hallway from the old jail entrance where the group of prisoners
16 entered the courthouse from across the street was located adjacent to courtroom five. Rhonda Dyas
17 was tried in courtroom seven. The distance between the doorway where she entered and the main
18 entrance of her courtroom was between 100 and 150 feet. (Exhibit #2, Paragraph #6) During the
19 days of her trial, Rhonda Dyas was always the first prisoner in the chain gang led through the
20 courthouse hallway.

21 28. After Rhonda Dyas and her co-defendant were seated at counsel table, the jury was
22 allowed to enter the courtroom. Jurors in Ms. Dyas' trial regularly waited outside the courtroom when
23 Rhonda Dyas was brought down the courthouse hallway, separated from other prisoners, and escorted
24 still chained at the ankles to the courtroom through the main entrance to Department Seven. (Exhibit
25 #2, Paragraph #8; Exhibit #3, Paragraph #7)

26 29. Because she was shackled at the ankles as well as at the waist and wrists while walking
27 across the street and down the hallway, Rhonda Dyas was not able to wear stockings with her
28 courtroom attire and could not wear high heeled shoes. She was forced to carry her stockings and

1 shoes in her hand while being brought across the street, through the old jail entrance of the courthouse
2 and down the central hallway to the courtroom.

3 30. Once Rhonda Dyas was seated in the courtroom with her co-defendant, the jury was
4 allowed to file into the courtroom through the same entrance Rhonda Dyas had just entered, down the
5 aisle and into the jury box. Because of where she was sitting, it was possible to see her ankle shackles
6 from the center aisle in the courtroom. (Exhibit #3, Paragraph #5)

7 31. The counsel table where Rhonda Dyas sat with her attorney did not have any modesty
8 panels. Given this, it is likely that jurors saw Rhonda Dyas in shackles from the jury box.

9 32. The shackles caused Rhonda Dyas a significant amount of discomfort and pain. The
10 shackles rubbed into her skin as her ankles swelled from the restraints. This was very painful and
11 caused visible sores on her ankles. When she moved her feet to get comfortable while seated at the
12 defense table, the shackles would make noise, drawing further attention to the fact that she was
13 shackled in the courtroom.

14 33. The pain caused by the shackles coupled with her concern that if she moved to get
15 comfortable she would make additional noise, made it difficult for her to concentrate on the trial and to
16 assist her attorney in her defense.

17 34. The shackles also caused her significant emotional torment. The process by which she
18 was brought from the jail to the courthouse and then into the courtroom was publicly humiliating for her.
19 As the group of shackled prisoners crossed the street from the new jail to the old jail people in waiting
20 cars would shout, honk and jeer at the group. In addition, people standing in the hallway as the group
21 progressed through the courthouse would stop and stare. It took all of Rhonda Dyas' strength and
22 concentration to not lose her composure during this process.

23 35. At the time Willie Dyas testified at Rhonda Dyas' trial, he was incarcerated. He had
24 already pleaded guilty to the murder of Scribner and received a sentence of life without parole.
25 Throughout his testimony, he wore waist chains, handcuffs and a prison-issue orange jumpsuit.

26 36. At the end of her trial, which spanned over a period of six days, the jury deliberated for
27 over three days prior to reaching a verdict. (Exhibit #, RT Index).

28 C. Findings of the Court of Appeal

1 37. Rhonda Dyas' conviction for robbery and first degree murder were upheld by the Court
2 of Appeal. The sentence of 25 years to life for murder was upheld. The concurrent four-year sentence
3 for robbery was stayed by the Court. (Exhibit #1, p 34)

4 38. Rhonda Dyas raised the issue of her being shackled throughout her trial before the
5 Court of Appeal. Given that she had no history of violence and had not indicated any intention to
6 disrupt the proceedings or attempt to escape, the Court of Appeal found that shackling Rhonda Dyas
7 throughout her trial was an abuse of discretion on the part of the trial judge. (Exhibit #1, p 14)
8 However, the Court found the error harmless since there was no evidence in the trial record that jurors
9 in fact saw Rhonda Dyas shackled. Of course, because the trial court had determined that it was
10 proper to shackle Rhonda Dyas, the Court had held no hearings to determine any prejudice from the
11 shackling. The appeal was based solely on the trial court's record and there was no evidence in the
12 record to establish that jurors saw the shackles. (Id. at 13-17)

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1 III. CLAIMS FOR RELIEF

2 First Claim

3 Petitioner's right to due process under the Fourteenth Amendment to the United States
4 Constitution was violated when she was shackled, over her objection, before the jury in the courtroom
5 and courthouse hallway.

6 Second Claim

7 Petitioner's right to due process under the Fourteenth Amendment to the United States
8 Constitution was violated when a witness scheduled to appear on her behalf was forced to testify in
9 chains and wearing prison clothes.

10
11 IV. PRAYER FOR RELIEF

12 WHEREFORE, Petitioner prays that this court:

13 1. Grant the petition for a writ of habeas corpus and release petitioner from unlawful
14 custody;

15 2. Set aside both the sentence and judgment of conviction, dismiss the charges with
16 prejudice, and order the expungement of all relevant court and law enforcement records.

17 3. Or, in the alternative, set aside the sentence and judgment of conviction and schedule
18 the matter for a new trial.

19 4. Or, in the alternative, order an evidentiary hearing pursuant to California Penal Code §
20 1484, where witnesses and former jurors may be called to determine the extent to

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1 which the accused's shackles were visible to jurors inside and outside the courtroom.

2 Dated: March 17, 1997

3 Respectfully submitted,

4
5 CHARLES D. WEISSELBERG

6 CHARLES D. WEISSELBERG
7 MICHAEL J. BRENNAN
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VERIFICATION

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RHONDA'S VERIFICATION GOES HERE

1 MEMORANDUM OF POINTS AND AUTHORITIES

2
3 **I. MS. DYAS' RIGHTS TO A FAIR TRIAL AND TO DUE PROCESS OF LAW WERE**
4 **VIOLATED WHEN SHE WAS SHACKLED THROUGHOUT HER TRIAL AND**
5 **BROUGHT SHACKLED BEFORE JURORS IN THE HALLWAY OF THE**
6 **COURTHOUSE.**

7 **A. The Court of Appeals Found that Shackling Rhonda Dyas During Her Trial was**
8 **an Abuse of Discretion.**

9 Shackling a defendant during her trial is said to be so inherently prejudicial that it is only
10 permissible as a last resort to protect an essential government interest. Holbrook v. Flynn, 475 U.S.
11 560, 568-69 (1986); Illinois v. Allen, 397 U.S. 337, 344 (1970). In determining whether shackles are
12 appropriate, the court essentially conducts a two prong analysis. First, the court must be persuaded by
13 compelling circumstances that shackles are necessary to maintain security. Second, the court must first
14 pursue and assess less restrictive alternatives to shackling. Jones v. Meyer, 899 F.2d 883, 884-85 (9th
15 Cir.), cert. denied, 498 U.S. 832 (1990); see also People v. Duran, 16 Cal. 3d 282, 288-293 (1976)
16 (holding that absent a showing of manifest need, a trial court may not order an accused physically
17 restrained during trial). Shackles are permissible to prevent escape, and to maintain safety and decorum
18 in the courtroom. Kennedy v. Cardwell, 487 F.2d 101, 105 (6th Cir.), cert. denied sub nom.,
19 Kennedy v. Gray, 416 U.S. 959 (1973). The severity of the crime with which the accused is charged
20 is not the measure of whether shackles should be used. Rather, "it is the defendant's conduct in
21 custody, now or at other times..., or his expressed intention to escape or engage in nonconforming
22 conduct during the trial that should be considered in determining whether there is a 'manifest need' for
23 shackles." People v. Jacla, 77 Cal. App. 3d 878, 884 (1st App. Dist. 1978) (interpreting People v.
24 Duran, 16 Cal. 3d 282 (1976)).

25 The only reason for shackling Rhonda Dyas stemmed from the severity of the charges pending
26 against her.² As the Court of Appeal correctly found, the record was insufficient to merit shackling
27 Rhonda Dyas throughout the duration of her trial. Thus, the trial court abused its discretion when it
28 ordered Rhonda Dyas shackled throughout her trial.

²Exhibit #1 at 14.

1 **B. Jurors Saw Rhonda Dyas' Shackles and the Shackling Therefore Undermined**
2 **Her Presumption of Innocence and Denied Her Due Process.**

3 **1. Shackling Rhonda Dyas Undermined Her Presumption of Innocence**
4 **Before the Jury.**

5 **a. Jurors Saw Ms. Dyas in Shackles.**

6 In determining inherent prejudice, the fundamental question is whether "an unacceptable risk is
7 presented of impermissible factors coming into play." Estelle v. Williams, 425 U.S. 501, 505 (1976)
8 (holding that the state may not compel the accused to wear prison clothes at trial); Holbrook v. Flynn,
9 475 U.S. at 570 (holding that the presence of additional security officers is not inherently prejudicial).
10 It is not necessary that jurors articulate that they are conscious of some prejudicial effect. Holbrook,
11 475 U.S. at 570. Rather, the jurors themselves may not be fully aware of the effect seeing the accused
12 in shackles has upon them. Id.

13 The underlying rationale of the rule rests with the assumption that shackling a defendant
14 interferes with the presumption of innocence that every accused is afforded at trial, consequently
15 denying the accused due process under the Fourteenth Amendment to the United States Constitution.
16 Taylor v. Kentucky, 436 U.S. 478, 483-86 (1978); Spain v. Rushen, 883 F.2d 712, 720-21 (9th Cir.
17 1989), cert. denied, 495 U.S. 910 (1990); Kennedy v. Cardwell, 487 F.2d at 107-111. When an
18 accused is shackled before the jury, the presumption of innocence is placed in serious jeopardy. Spain
19 v. Rushen, 883 F.2d at 721. Unlike the use of additional security officers, shackling the accused during
20 trial is specifically directed at the accused and creates the impression that she is not to be trusted and
21 should be separated from the rest of society. Holbrook v. Flynn, 475 U.S. at 569-70 (holding that the
22 presence of additional security officers in a courtroom was not inherently prejudicial since jurors may
23 not have concluded that such arrangements are unusual and since the presence of guards did not single
24 out the accused, and specifically distinguishing the presence of additional security officers from a
25 situation where the accused is shackled).

26 Rhonda Dyas was shackled throughout her five-day trial. Unlike the situation in Holbrook,
27 shackling Rhonda Dyas singled her out in the courtroom and created the impression that she posed a
28 threat to others in the courtroom and was not to be trusted. Each day of her trial, Rhonda Dyas was
29 seated at the defense table when jurors entered and exited the courtroom. The table at which she sat

1 did not have modesty panels and was clearly visible from the entrance and center aisle of the courtroom
2 where the jury entered and exited the courtroom. Jurors had to walk behind Rhonda Dyas when going
3 to and from the courtroom door and the jury box.

4 Rhonda Dyas' shackles were not covered at any time when she was in the courtroom. This
5 differs significantly from cases such as Jones v. Meyer, 899 F.2d 883, 885 (9th Cir. 1990), where the
6 defendant's handcuffs were covered by a sweater or jacket. Rhonda Dyas was shackled at the ankles
7 and wore a dress that fell just below the knee when standing. Consequently, her ankles were clearly
8 visible in the courtroom. The shackles also made audible noise when Rhonda Dyas moved in her seat,
9 drawing further attention to the fact that she was shackled. Thus, it is likely that jurors saw Rhonda
10 Dyas in shackles while in the courtroom.

11 The Ninth Circuit held in Spain v. Rushen, that the extent of prejudice is a function of the extent
12 of the shackling and the chains' visibility to the jurors. 883 F.2d at 722. The greater the visibility of the
13 chains, the greater the prejudice. Id. Each morning of her trial and after lunch recesses, Rhonda Dyas
14 was brought down the central hallway of the Riverside courthouse shackled to other prisoners. Some
15 of these prisoners were dressed in jail attire rather than street clothes. At all times when in the hallway,
16 Rhonda Dyas wore both ankle shackles and waist chains. When Rhonda Dyas was brought down the
17 public central hallway of the Riverside Courthouse in shackles there were jurors assigned to her case
18 waiting outside the courtroom. The process by which Rhonda Dyas was brought down the hallway
19 was conspicuous and noisy. Essentially, there was no way to avoid seeing Rhonda Dyas proceeding
20 down the hallway and into the courtroom in shackles. Thus, in addition to seeing Rhonda Dyas
21 shackled in the courtroom, jurors on her case were exposed to Rhonda Dyas in shackles as many as
22 twelve times outside the courtroom --- assuming the trial spanned over six days and accounting for
23 morning entrances and lunch recesses. The combination of the facts that jurors on Rhonda Dyas' case
24 saw her numerous times shackled extensively outside the courtroom and that the court took no curative
25 measures to hide Ms. Dyas' shackles when she was in the courtroom makes this case significantly
26 different from cases such as People v. Rich, 45 Cal. 3d 1036 (1988), cert. denied, 488 U.S. 1051
27 (1989). In Rich, the Supreme Court held that a brief, inadvertent glance by at least one of the jurors
28 coupled with curative measures to prevent the jury's seeing the shackles in the courtroom did not

1 constitute reversible error. Id. at 1084-85. Furthermore, in Rich the Court noted that the record did
2 not support the accused's claim that he was shackled while in the courtroom. Id. at 1083, n.11. The
3 record in Rhonda Dyas' case clearly supports her contention that she was shackled in the courtroom.
4 Furthermore, the court took no curative measures to prevent the jury from seeing her shackled while in
5 the courtroom. Finally, Rhonda Dyas was seen by jurors on her case shackled in the hallway twice a
6 day during each full day of her trial.

7 It may be appropriate to restrain the accused when transporting her to and from the courtroom
8 in order to ensure safety and prevent escape. People v. Duran, 16 Cal. 3d at 289. However, in
9 Rhonda Dyas' case, transporting her in shackles with other inmates, some of whom were dressed in
10 prison clothes, served only to draw the jury's attention to the fact that she was shackled both inside and
11 outside of the courtroom. Jurors waiting in the hallway and seeing Rhonda Dyas brought down that
12 hallway in ankle shackles and waist chains could reasonably be expected to look, once inside the
13 courtroom, to see if Rhonda Dyas was still shackled. Normal human curiosity would lead them to do
14 this. Thus, the fact that Rhonda Dyas was brought down the public hallway of the courthouse in
15 restraints further brought the jury's attention to the fact that she was shackled throughout her trial.

16 Furthermore, conduct outside the courtroom may contribute to prejudice. Among the relevant
17 factors to be considered in assessing inherent prejudice are issues of actions potentially affecting the
18 jury both within the courtroom as well as outside the courtroom. Norris v. Risley, 878 F.2d 1178,
19 1183 (9th Cir. 1989). In Norris, the court held that the fact that the jury in a rape trial had to pass
20 through a group of at least twenty women wearing "Women Against Rape" buttons contributed to the
21 prejudice against the defendant. Similarly, the fact that Rhonda Dyas was forced to walk shackled at
22 the ankle and wearing waist chains past jurors waiting outside the courtroom entrance contributed to
23 the inherent prejudice in her case and further compounded the prejudice resulting from her being
24 shackled inside the courtroom. As the Ninth Circuit stated in Norris, "The constitutional safeguards
25 relating to the integrity of the criminal process attend every state of a criminal proceeding, starting with
26 arrest and culminating with a trial 'in a courtroom presided over by a judge.'" Norris, 878 F.2d at 1183
27 (quoting Cox v. Louisiana, 379 U.S. 559, 562 (1965) and Rideau v. Louisiana, 373 U.S. 723, 727
28 (1963)).

1 The combination of shackling Rhonda Dyas in the courtroom within plain view of the jury and
2 forcing her to enter the courtroom through the public central hallway of the courthouse past waiting
3 jurors created an unacceptable risk of prejudice against her.

4 **b. The Jury's View of Rhonda Dyas in Shackles was Neither Brief
5 Nor Inadvertent and the Court Took no Curative Measures to
6 Cancel the Effect of Seeing Rhonda Dyas in Shackles.**

7 A brief or inadvertent glance at the accused in shackles may not be sufficient to cause prejudice
8 that interferes with the accused's presumption of innocence. Wilson v. McCarthy, 770 F.2d 1482,
9 1485-86 (9th Cir. 1985); People v. Rich, 45 Cal.3d at 1085. This is particularly the case where the
10 court instructs the jury that such a brief glance should be disregarded and reiterates that the jury should
11 begin with the presumption that the accused is innocent, or in the alternative, takes other curative
12 measures. United States v. Haliburton, 870 F.2d 557, 561-62 (9th Cir.), cert. denied, 492 U.S. 910
13 (1989). The court has a sua sponte duty to instruct the jury that they are to disregard the fact that the
14 accused is in restraints. People v. Duran, 16 Cal. 3d at 291-292.

15 The jurors assigned to Rhonda Dyas' case had no fewer than twelve opportunities to see
16 Rhonda Dyas in shackles in the hallway of the courthouse as she entered the courtroom. Rhonda Dyas
17 was shackled throughout the duration of her almost six-day trial. Thus, there was ample opportunity for
18 the jurors in Rhonda Dyas' case to see her in shackles and furthermore to see her continuously
19 restrained both inside and outside the courtroom. This situation differs significantly from the situations in
20 Haliburton, Wilson, and Rich, where the jurors' opportunity to see the accused or a defense witness in
21 restraints was very brief. In Wilson the jury only saw the defense witness in shackles as he left the
22 witness stand. 770 F.2d at 1485. Similarly, in Haliburton the jury briefly and inadvertently saw the
23 accused in handcuffs in the court hallway when waiting for the elevator. 870 F.2d at 559-60. In Rich,
24 no more than one or two jurors briefly saw the accused in the restroom in restraints, however, the court
25 took curative measures to ensure that the shackles could not be seen in the courtroom by placing a
26 curtain around counsel table. 45 Cal. 3d at 1084.

27 In Rhonda Dyas' case, the jury saw her in shackles in the hallway several times a day each day
28 of the trial. The process by which Rhonda Dyas was brought down the hallway of the courthouse was
time consuming since the group of shackled prisoners had to stop at each courtroom to unshackle and

1 separate prisoners with appearances in that courtroom. The courtroom where Rhonda Dyas was tried
2 was at the end of the hallway and likely one of the last stops made by the group of shackled prisoners.
3 Furthermore, it is likely that seeing her in the hallway in shackles drew the jury's attention to the fact that
4 she was shackled throughout her six-day trial. Thus, the jury had ample opportunity to see Rhonda
5 Dyas in shackles. In fact, on no occasion during the trial did the jury have an opportunity to view
6 Rhonda Dyas without, at least, conspicuous, visible shackles on her legs.

7 No cautionary instruction was given to the jury in Rhonda Dyas' trial. Rather, the jury had
8 ample opportunity to view Rhonda Dyas in shackles without the benefit of a cautionary instruction that
9 jurors should disregard the fact the she was brought down the hallway shackled with other prisoners
10 and was shackled throughout her trial. This situation differs significantly from the situation in Haliburton
11 where the court took great pains to rectify any prejudice that might have resulted from a brief,
12 inadvertent glimpse of the accused in shackles. In Haliburton, the court went so far as to orchestrate a
13 charade where jurors could see the accused unrestrained in the hallway after several jurors had briefly
14 seen the accused in handcuffs. The Ninth Circuit held in Haliburton that, given the lengths that the court
15 had gone to rectify any inherent prejudice resulting from a brief glimpse of the defendant handcuffed,
16 any risk of such prejudice was eliminated. 870 F.2d at 561. No similar corrective measures were
17 taken in Rhonda Dyas' case in spite of the fact that the jury was afforded an almost constant view of
18 Rhonda Dyas in shackles and, at times, also in waist chains.

19
20 **2. The Shackles Interfered with Rhonda Dyas' Ability to Concentrate on**
21 **Her Trial, Assist in Her Defense and Caused Her Significant Physical**
22 **and Emotional Torment.**

23 In addition to jeopardizing an accused's presumption of innocence before the jury, shackling
24 the accused also prejudices her in other ways. Shackles may interfere with the accused's mental
25 faculties and ability to concentrate on the proceedings; they may impede communication between the
26 accused and her attorney; they may detract from the dignity of the proceedings; and they may be painful
27 to the accused. Spain v. Rushen, 883 F.2d at 721. These factors should also be considered when
28 assessing the effect shackling has on a defendant's due process rights.

Rhonda Dyas has declared that the shackles caused her a great deal of physical and emotional

1 torment. The ankle shackles dug into her skin and caused sores. She was constantly in discomfort
2 throughout the trial due to the fact that the shackles were digging into her skin. She was afraid to move
3 her feet in an attempt to temporarily release some of the pressure from the shackles on her ankles
4 because of her fear that the sound from the shackles when she moved would attract further attention to
5 their presence in the courtroom.

6 The process by which she was brought across a public street before a jeering public and down
7 a crowded public hallway caused her significant emotional distress and humiliation. The shackling
8 became her focus throughout the trial. Consequently, Rhonda Dyas' ability to concentrate on the court
9 proceedings was clouded by the pain she felt and the fact that she was afraid to move out of fear of
10 drawing further attention to the shackles.

11 Thus, in addition to prejudicing the jury against her, the shackles also interfered with her ability
12 to assist in her defense and concentrate on the court proceedings, and caused her great pain.

13
14 **C. Shackling Rhonda Dyas both Inside and Outside the Courtroom Undermined**
15 **Her Presumption of Innocence and, Therefore, the Error is Reversible Per Se.**

16 Petitioner recognizes that California courts do not consider shackling to be error that is
17 reversible per se. However, petitioner maintains that the error caused by her shackling is reversible per
18 se under federal law and wishes to preserve the argument on appeal.

19 Fundamental to our system of justice and the Due Process Clause of the Fourteenth
20 Amendment to the United States Constitution is the right of the accused to be presumed innocent until
21 proven guilty. Estelle v. Williams, 425 U.S. at 503. Shackling a defendant may undermine the
22 presumption of innocence afforded every defendant required to answer to a charge before a court.
23 Spain v. Rushen, 883 F.2d at 721. While not all constitutional errors are reversible per se, errors
24 which infect the entire trial process are reversible per se and thus are not subject to harmless error
25 analysis. Arizona v. Fulminante, 499 U.S. 379, 309-311 (1991). These errors include deprivation of a
26 right to counsel, a trial judge who is not impartial, exclusion from the jury members of the defendant's
27 race, the right to self-representation at trial and the right to a fair trial. Id. at 309-310. The
28 distinguishing feature of each of these errors is that they infect the entire process "from beginning to
end." Id. Errors which are subject to harmless error analysis have been termed trial errors and refer to

1 errors which occur while the case is being presented to the jury. Id.; Sullivan v. Louisiana, 508 U.S.
2 275, 281 (1993). The difference is that trial errors may be assessed against other evidence presented
3 to determine whether or not they were harmless beyond a reasonable doubt. Fulminante, 499 U.S. at
4 307-08, 310.

5 While the Supreme Court has not specifically categorized shackling as either a trial error or a
6 structural defect, shackling a defendant infects the entire trial process since it undermines the
7 presumption of innocence afforded the accused. As such, it functions more as a structural defect than
8 as a discrete trial error where it is possible to assess the other evidence to determine if the error was
9 harmless beyond a reasonable doubt. The resultant prejudice from shackling a defendant throughout
10 her trial and exposing the jury to the defendant shackled outside the courtroom each time court
11 reconvened after an evening or lunch recess cannot fairly be weighed against the evidence presented in
12 the case. Shackling a defendant, where it is found to be an abuse of discretion, is not evidence of
13 anything relating to the defendant's guilt or innocence that can be placed into a formulaic assessment
14 against other evidence adduced at trial. In this key respect, unwarranted shackling differs from other
15 errors found by the Supreme Court to be trial errors.³ As such, shackling Ms. Dyas throughout her trial
16 is error that is reversible per se.

17
18 **D. The Error Resulting from Shackling Rhonda Dyas Before the Jury was not**
19 **Harmless Beyond a Reasonable Doubt and, Thus, Caused her Prejudice.**

20 **1. The Jury's Opportunity to View Rhonda Dyas in Shackles was**

21
22 ³ The Court in Fulminante listed the following examples of errors which would constitute trial error
23 subject to the Chapman standard: unconstitutionally overbroad jury instructions at the sentencing stage
24 of a capital case; admission of evidence at the sentencing stage of a capital case in violation of the Sixth
25 Amendment; jury instruction containing an erroneous conclusive presumption; jury instruction misstating
26 an element of the offense; jury instruction containing an erroneous rebuttable presumption; erroneous
27 exclusion of defendant's testimony regarding the circumstances of his confession; restriction on a
28 defendant's right to cross-examine a witness for bias in violation of the Sixth Amendment; denial of a
defendant's right to be present at trial; statute improperly forbidding trial court's giving a jury instruction
on a lesser included offense in a capital case; failure to instruct the jury on the presumption of
innocence; admission of identification evidence in violation of the Sixth Amendment; admission of the
out-of-court statement of a nontestifying codefendant; confession obtained in violation of Massiah v.
United States; admission of evidence obtained in violation of the Fourth Amendment and denial of
counsel at a preliminary hearing. Arizona v. Fulminante, 499 U.S. at 306-307.

1 **Extensive and, Thus, the Proper Standard is the Chapman Standard.**

2 The standard for measuring whether the inherent prejudice resulting from unwarranted shackling
3 is whether the error is harmless beyond a reasonable doubt. Chapman v. California, 386 U.S. 18, 24
4 (1967). While the California Supreme Court has not expressly adopted this standard, courts of appeal
5 in California have interpreted the standard for shackling as a harmless beyond a reasonable doubt
6 standard. See People v. Jackson, 14 Cal. App. 4th 1818, 1829-30 (4th App. Dist. 1993); People v.
7 Ceniceros, 26 Cal. App. 4th 266, 278-79 (5th App. Dist. 1994); People v. Jacla, 77 Cal. App. 3d
8 878, 888-891 (1st App. Dist. 1978). However, where the opportunities for viewing an accused in
9 shackles are brief or inadvertent, or where there is no evidence that the jury actually saw the shackles,
10 the standard may be either the lesser Watson standard of whether it is reasonably probable that a result
11 more favorable to the accused would have been reached absent the error, People v. Watson, 46 Cal.
12 2d 818, 836 (1956), or the Chapman harmless beyond a reasonable doubt standard. People v.
13 Jackson, 14 Cal. App. 4th at 1829-30. See also People v. Givan, 4 Cal. App. 4th 1107, 1118 (2d
14 App. Dist. 1992) (finding the error harmless under either the Chapman standard or the Watson
15 standard); People v. Valenzuela, 151 Cal. App. 3d 180, 196 (3d App. Dist. 1985) (finding the error of
16 shackling defense witnesses to be harmless by any standard where the witnesses are housed in the
17 maximum security unit of a maximum security prison).

18 The Court of Appeal has already held that shackling Rhonda Dyas during her trial was an abuse
19 of discretion. This fact coupled with the extended period of time she was shackled before the jury both
20 inside and outside of the courtroom meets the requirements for Constitutional error under California
21 law. Thus, in Rhonda Dyas' case the proper standard is whether the error was harmless beyond a
22 reasonable doubt.

23
24 **2. The Error of Shackling Rhonda Dyas was not Harmless Beyond a**
25 **Reasonable Doubt.**

26 When applying the Chapman standard, the proper inquiry is not an attenuated hypothetical
27 analysis of whether, absent the error, a hypothetical jury would have convicted the accused. Sullivan v.
28 Louisiana, 508 U.S. at 279. Rather, the proper inquiry is "whether the guilty verdict actually rendered
in this trial was surely unattributable to the error. . . . because to hypothesize a guilty verdict that was

1 never in fact rendered -- no matter how inescapable the findings to support that verdict might be --
2 would violate the jury-trial guarantee." Id.

3 There is reasonable doubt that shackling Rhonda Dyas throughout her trial both inside and
4 outside the courtroom was harmless. Rhonda Dyas was charged under an aiding and abetting theory.
5 There was no evidence that she participated directly in the death of the victim. Furthermore, the jury
6 deliberated for over three days after a trial which lasted roughly six days. The physical and emotional
7 torment from being shackled made it difficult for Rhonda Dyas to concentrate on the trial and her
8 defense. Thus, there is reasonable doubt that the improper shackling of Rhonda Dyas was harmless.
9 After a five-day trial, the jury deliberated for almost three days. This is a relatively long time for jury
10 deliberations given the length of the trial. People v. Cardenas, 31 Cal.3d 897, 907 (1982) (holding that
11 twelve hours of deliberation indicates a close case).

12 In such a close case, the fact that Rhonda Dyas was shackled and that the jury saw her in
13 shackles both inside and outside the courtroom becomes significantly more important. Rhonda Dyas
14 was charged and convicted under an aiding and abetting theory. There was no evidence that she
15 directly participated in the victim's death. Two witnesses gave conflicting accounts of the extent to
16 which Rhonda Dyas was involved in the robbery of the victim. However, the prosecutor argued that to
17 convict Rhonda Dyas of murder, they had to find that she aided and abetted the robbery of Scribner.
18 Thus, the extent of her involvement in and knowledge of the robbery was substantially in dispute.

19 Where the evidence against the accused essentially amounts to two versions of the same story,
20 the risk that the jury may be influenced by an accused's in-custody status creates reasonable doubt that
21 the error is harmless. People v. Taylor, 31 Cal. 3d 488, 500-01 (1982) (holding that forcing an
22 accused to wear jailhouse clothes at trial where the evidence against him was essentially two versions of
23 the same story creates reasonable doubt that the error was harmless). Similarly, the Court of Appeal
24 distinguished Taylor in a case where the evidence against the accused was not balanced when it held
25 that forcing the accused to wear prison clothes was harmless error beyond a reasonable doubt. See
26 People v. Pena, 7 Cal. App. 4th 1294, 1306-08 (2d App. Dist. 1992). In People v. Tuilaepa, 4 Cal.
27 4th 569, 584 (1992), the California Supreme Court distinguished Duran and held that overwhelming
28 evidence against the accused might mitigate error resulting from shackling the accused where the

1 shackles were seen for only a brief period. However, in Rhonda Dyas' case the evidence that she
2 actually participated in the robbery was equivocal and the jury had ample opportunity to see Rhonda
3 Dyas in shackles both inside and outside the courtroom. Furthermore, the physical and emotional
4 torment from being shackled made it difficult for Rhonda Dyas to concentrate on the trial and her
5 defense. Thus, there is reasonable doubt that the improper shackling of Rhonda Dyas was harmless.

6
7 **II. MS. DYAS' RIGHTS TO A FAIR TRIAL AND TO DUE PROCESS OF LAW WERE**
8 **VIOLATED WHEN WITNESSES APPEARING ON HER BEHALF WERE**
9 **FORCED TO TESTIFY BEFORE THE JURY IN CHAINS AND PRISON**
10 **CLOTHES.**

11 The test for inherent prejudice resulting from shackling a defendant is applicable to defense
12 witnesses since the concerns are similar in each situation. People v. Duran, 16 Cal. 3d 282, 288 n.4
13 (1976). It is acknowledged that the shackling of a defense witness may be of lesser consequence than
14 the shackling of the defendant. Id. However, the accused has a right to have defense witnesses testify
15 without shackles, except in circumstances where there is danger of harm or escape. Kennedy v.
16 Cardwell, 487 F.2d at 105, n.5. The reason for the rule is to avoid the inherent prejudice to the
17 defendant resulting from the jury suspecting the witness' credibility when that witness testifies in
18 shackles. Id.

19 Some courts appear to have drawn a distinction between the prejudicial effects resulting when
20 in-custody witnesses testify in shackles and when a witness is not in custody. For example, in People v.
21 Valenzuela, 151 Cal. App. 3d 180, 193-94 (3d App. Dist. 1984) the Court held that it was harmless
22 error to shackle defense witnesses where the jury would learn that the witnesses were in custody
23 through the course of their testimony. This would imply that in-custody witnesses can be shackled
24 without risk of reversible prejudice to the defendant, but that witnesses who are not otherwise in
25 custody may not be shackled.⁴ The language in Kennedy v. Cardwell, however, implies no such

26 ⁴ The Ceniceros court, which followed the court's opinion in Valenzuela, made a further distinction
27 between witnesses in state custody and witnesses in local custody when it held that shackling defense
28 witnesses in state custody was not prejudicial even where prosecution witnesses in local custody were
not shackled and were permitted to testify in suits. The Ceniceros court found that the effect of this
disparate treatment was "minimal." People v. Ceniceros, 26 Cal. App. 4th 266, 281 (5th App. Dist.

(continued...)

1 distinction. 487 F.2d at 105, n5. The court's reasoning in Kennedy was adopted by the California
2 Supreme Court in Duran. 16 Cal. 3d at 288, n.4. the Court in Kennedy stated that witnesses should be
3 allowed to "appear free of shackles, except in special circumstances where there is evident danger of
4 escape or harm." Id. The language, "danger of escape" implies that the opinion refers to in-custody
5 witnesses. Thus, additional prejudice to a witness' credibility results from shackling over and above
6 what flows from mere incarceration. Given this, the Valenzuela and Ceniceros opinions are not in
7 keeping with state Supreme Court or federal law on this issue.

8 Willie Dyas testified at Rhonda Dyas' trial in shackles and an orange prison jumpsuit. At the
9 time of his testimony he was incarcerated subsequent to his having plead guilty to the murder of
10 Scribner. Given that his testimony was substantially in conflict with the testimony of the key prosecution
11 witness and that he was the husband of the accused, forcing him to appear before the jury violated
12 Rhonda Dyas' right to have witnesses appear free of shackles and undermined Willie Dyas' credibility
13 before the jury.

14 Although Willie Dyas was called by the prosecution, he was ordered out of state prison by the
15 defense and was originally scheduled to testify for the accused, Rhonda Dyas. The testimony offered
16 by Willie Dyas with respect to Rhonda Dyas substantially conflicted with the testimony of the
17 prosecution's key witness, Tina Boyd. As such, the fact that Willie was called first by the prosecution
18 should not affect the applicability of the Duran rule. The substance of his testimony regarding Rhonda
19 Dyas was beneficial to her case.

20 Valenzuela and Ceniceros are distinguishable from the situation surrounding Willie Dyas'
21 testimony. First, all the inmate witnesses who testified in the Valenzuela case were housed in maximum
22 security special housing units within the prison where they were incarcerated. 151 Cal. App. 3d at 191.
23 The trial judge found based on this fact that the witnesses should be restrained while in the courtroom.
24 Id. The Valenzuela court also made special efforts to prevent the jury's unnecessary exposure to the
25 witnesses in shackles. For example, the witnesses were sworn outside the presence of the jury and
26 were brought into and taken out of the courtroom while the jury was not present. Id. In Ceniceros, the

27 _____
28 (...continued)
1994).

1 court took similar precautions by instructing the jury that they were not to consider the presence of
2 shackles when assessing the credibility of witnesses. 26 Cal. App. 4th at 281. No similar precautions
3 were taken when Willie Dyas testified in spite of the fact that he was the accused's husband, further
4 increasing any prejudice that might result from his testifying in shackles.

5
6 **III. AT A MINIMUM, PETITIONER SHOULD BE AFFORDED AN OPPORTUNITY**
7 **TO HAVE AN EVIDENTIARY HEARING WHERE FORMER JURORS MAY BE**
8 **CALLED AND EXAMINED REGARDING THEIR OBSERVATIONS OF**
9 **PETITIONER IN SHACKLES BOTH INSIDE AND OUTSIDE THE**
10 **COURTROOM.**

11 This Court may grant Petitioner relief based upon the merits of the petition and admission in the
12 return of allegations "that, if true, justify the relief sought." People v. Romero, 8 Cal. 4th 728, 739
13 (1994). In the alternative, the Court may determine that "petitioner's right to relief hinges on the
14 resolution of factual disputes." Id. at 739-40. The Court may then order an evidentiary hearing and
15 "have full power and authority to require and compel the attendance of witnesses, by process of
16 subpoena and attachment, and to do and perform all other acts and things necessary to a full and fair
17 hearing and determination of the case." Cal. Penal Code § 1484.

18 The circumstantial evidence that jurors actually saw Rhonda Dyas in shackles is sufficiently
19 strong to merit granting her relief. However, in the alternative, Rhonda Dyas requests that this Court
20 order an evidentiary hearing where former jurors may be subpoenaed and questioned regarding the
21 extent to which they saw her in shackles throughout the trial proceedings and outside the courtroom
22 while the trial was ongoing.

23 //

24 //

25 //

26 //

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28 //

1 CONCLUSION

2 For the foregoing reasons, petitioner respectfully prays that the writ of habeas corpus be
3 granted.

4 Dated: March 17, 1997

5
6 Respectfully submitted.

7
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