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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RHONDA JEAN DYAS, Petitioner, v. WARDEN SUSAN POOLE, Respondent.	NO. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS; EXHIBITS

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INTRODUCTION

Petitioner, Rhonda Jean Dyas, seeks federal habeas corpus relief pursuant to 28 U.S.C. §2254, as an individual in state custody. Ms. Dyas is unlawfully incarcerated at the California Institution for Women in Frontera, California, in violation of her Constitutional right to Due Process under the Fourteenth Amendment to the United States Constitution.

Ms. Dyas is currently serving a sentence of 25 years to life, pursuant to a conviction of first degree murder imposed in Riverside County Superior Court on June 18, 1991. Ms. Dyas was shackled throughout her trial in violation of the Fourteenth Amendment. In addition to being shackled throughout her trial, Ms. Dyas was taken in shackles to the courtroom where she was tried through the busy main courthouse hallway. The hallway was filled with waiting jurors, members of the public and other individuals with court business. Given this, Ms. Dyas was denied the presumption of innocence necessary for a fair trial.

In addition, Willie Dyas, a witness who testified in support of petitioner's defense and who was, at the time, petitioner's husband, testified in court in jail clothes and shackles. The fact that Willie Dyas, a beneficial witness for the defense, testified in jail attire and shackles deprived petitioner of the ability to present witnesses on her behalf without the prejudicial effect of having jurors question a witness' credibility as a result of the witness' appearance.

Ms. Dyas' conviction was upheld on direct appeal in the Second District Court of Appeal for the State of California and a petition for review was denied by the California Supreme Court. The Court of Appeal ruled that it was error to shackle her, but the Court somehow found that the error was "harmless". Ms. Dyas filed petitions for a writs of habeas corpus in Riverside County Superior Court, in the Court of Appeal for the State of California, and in the California Supreme Court. The petitions were denied. Therefore, Ms. Dyas has exhausted her state remedies and properly brings this petition pursuant to 28 U.S.C. §2254.

Having exhausted her state remedies, petitioner, Rhonda Jean Dyas, seeks federal habeas corpus relief from this Court.

STATEMENT OF FACTS

I. The Death of Connie Scribner

On May 1, 1989, Connie Scribner ("Scribner") came to the Dyas residence, where Petitioner, Rhonda Dyas, lived with her husband, Willie Dyas, and her daughter, saying that she had some cocaine to sell. (See Exhibit C: Excerpts from Reporter's Transcript of Trial, 255). Also at the house when Scribner arrived were Plummer Williams, Jr. ("Williams"), a friend of Willie Dyas', and his girlfriend, Tina Boyd ("Boyd"). (Id. at 50, 57, 61).

The remainder of the testimony, concerning events at the Dyas residence prior to Scribner's death, is in dispute. According to testimony at trial by Willie Dyas, at some point, Willie Dyas and Williams discussed robbing Scribner of money and drugs she had on her person. (Id. at 250, 295). Later, everyone went into the back bedroom of the Dyas residence. (Id. at 252-53). Willie Dyas purchased $12 worth of cocaine from Scribner and began shooting up. (Id. at 256). Rhonda Dyas left the back bedroom to care for her baby. (Id. at 252). Willie Dyas and Williams decided to rob Scribner. (Id. at 250). Willie Dyas choked Scribner with a karate belt and hammer. (Id. at 257). Williams also choked her with a string or a rope. (Id. at 250). Willie Dyas hit Scribner with a hammer while Williams held her down. (Id. at 250). Williams tied up Scribner. (Id. at 256). Williams pulled down Scribner's sweatpants and found the money in her pants. (Id. at 256). Willie Dyas and Williams took an hour to kill Scribner. (Id. at 261). Willie Dyas testified that Rhonda Dyas was not in the back bedroom when the murder and robbery occurred. (Id. at 252). At some point Rhonda Dyas looked inside the bedroom but Willie Dyas told her to get out or the same thing would happen to her. (Id. at 285, 288). He slapped Rhonda Dyas, who was hysterical. (Id. at 288-89). Willie Dyas testified that Boyd went through Scribner's duffel bag. (Id. at 288).

According to the testimony of Tina Boyd, everyone but Boyd was in the back bedroom. (Id. at 62) Boyd remained behind to take care of Rhonda and Willie Dyas' daughter. (Id. at 63) Upon hearing noises from the back bedroom, Boyd went towards the bedroom where Rhonda Dyas was standing near the doorway. (Id. at 64-65) When Boyd

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

The next day, May 2, Williams called his parole officer, Arthur Martinez, to report that he had witnessed a homicide and gave the address of the Dyas residence. (Id. at 312-13, 316-17). David Madden, a detective, went to the Dyas residence to follow up on a report that there was a dead body at the home. (Id. at 17-18). During a search of the Dyas residence, Det. Madden found Scribner's body in the back bedroom. (Id. at 22-23).

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

II. **The Trial**

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

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

Rhonda Dyas has consistently denied any involvement in the murder or robbery of Scribner.

The testimony of Willie Dyas and Tina Boyd was in substantial conflict as to Rhonda Dyas' knowledge of and assistance in the robbery. (Id. at 49-140, 248-310). This was the crucial issue necessary to secure a murder conviction of Rhonda Dyas under a theory of felony murder. (Id. at 709-713).

Throughout her trial, Rhonda Dyas was shackled at the ankles while in court. (Exhibit B-4: Declaration of Frank Stanton Peasley, at Paragraph #3). At the beginning of the trial, Mr. Peasley, Rhonda Dyas' attorney, requested that her shackles be removed. (See Exhibit C at April 15-16, Reporter's Transcript of Pre-Trial Proceedings, 28). The request was denied. The trial judge stated that given the severity of the charges against the accused, he believed that it was appropriate that she be shackled throughout the trial. (Id. at 30-31).

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

At the time of her trial, Rhonda Dyas was housed on the sixth floor of the new Riverside County Jail. The new jail is located across the street from the old jail, which connects to the Courthouse where Rhonda Dyas and Williams were tried. Each day of her trial, Rhonda Dyas was brought shackled at the ankles, waist and wrists across the street to the old jail, and through the old jail entrance to the courthouse. She was shackled to other prisoners with court appearances on that given day. Some of these prisoners were dressed in jail clothes. The group of shackled prisoners was brought to the courthouse and to individual courtrooms via a long central hallway in the courthouse. The hallway was the main access to courtrooms in the courthouse and consequently, was used by everyone with business in the courthouse, including witnesses, attorneys, the general public and jurors. (Exhibit B-4, Paragraph #5-7; Exhibit B-5: Declaration of Judy A. McCollin, Paragraph #4, 9).

As the group of shackled inmates was brought down the hallway, the chains they

were wearing made a great deal of noise. Officers would ask people standing in the hallway to step to the sides of the hallway to make room for the group of inmates to proceed down the center. (Exhibit B-5, Paragraph #4). At the door to each courtroom, the group would stop. Prisoners with appearances in that particular courtroom would be unchained from the rest of the group and escorted into the courtroom. The group would then proceed down the hallway to the next courtroom where the process of unshackling certain prisoners was once again repeated. When prisoners were unshackled from the rest of the group, the chains that bound them to the group would clank against the hard marble floor of the courthouse hallway. The hallway was lined with benches where people awaiting access to the courtrooms would sit until they were allowed to enter the courtroom. Often jurors would wait on these benches prior to being allowed to enter the courtroom where they were serving. (Exhibit B-4, Paragraphs #7, 8; Exhibit B-5, Paragraph #7).

Throughout the duration of her trial, Rhonda Dyas was brought into the courthouse and to her courtroom in this fashion. The hallway from the old jail entrance where the group of prisoners entered the courthouse from across the street was located adjacent to courtroom five. Rhonda Dyas was tried in courtroom seven. The distance between the doorway where she entered and the main entrance of her courtroom was between 100 and 150 feet. (Exhibit B-4, Paragraph #6). During the days of her trial, Rhonda Dyas was always the first prisoner in the chain gang led through the courthouse hallway.

After Rhonda Dyas and her co-defendant were seated at counsel table, the jury was allowed to enter the courtroom. Jurors in Ms. Dyas' trial regularly waited outside the courtroom when Rhonda Dyas was brought down the courthouse hallway, separated from other prisoners, and escorted still chained at the ankles to the courtroom through the main entrance to Department Seven. (Exhibit B-4, Paragraph #8; Exhibit B-5, Paragraph #7). Because she was shackled at the ankles as well as at the waist and wrists while walking across the street and down the hallway, Rhonda Dyas was not able to wear stockings with her courtroom attire and could not wear high heeled shoes. She was forced to carry her stockings and shoes in her hand while being brought across the street, through the old jail

entrance of the courthouse and down the central hallway to the courtroom.

Once Rhonda Dyas was seated in the courtroom with her co-defendant, the jury was allowed to file into the courtroom through the same entrance that Rhonda Dyas had just entered, down the aisle and into the jury box. Because of where she was sitting, it was possible to see her ankle shackles from the center aisle in the courtroom. (Exhibit B-5, Paragraph #5). The counsel table where Rhonda Dyas sat with her attorney did not have any modesty panels. Given this, it is likely that jurors saw Rhonda Dyas in shackles from the jury box.

The shackles caused Rhonda Dyas a significant amount of discomfort and pain. The shackles rubbed into her skin as her ankles swelled from the restraints. This was very painful and caused visible sores on her ankles. When she moved her feet to get comfortable while seated at the defense table, the shackles would make noise, drawing further attention to the fact that she was shackled in the courtroom. The pain caused by the shackles, coupled with her concern that if she moved to get comfortable she would make additional noise, made it difficult for her to concentrate on the trial and to assist her attorney in her defense.

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

Willie Dyas was initially scheduled to be called by the defense to testify for Rhonda Dyas. (Exhibit B-4, Paragraph #10). However, before he could be called as part of the defense, the prosecution called him as part of their case in chief. (Id.) At the time Willie Dyas testified at Rhonda Dyas' trial, he was incarcerated. He had already pleaded guilty to the murder of Scribner and received a sentence of life without parole. Throughout his

testimony, he wore waist chains, handcuffs and a prison-issue orange jumpsuit.

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

III. **Findings of the Court of Appeal**

Rhonda Dyas' conviction for robbery and first degree murder were upheld by the Court of Appeal. The sentence of 25 years to life for murder was upheld. The concurrent four-year sentence for robbery was stayed by the Court. (Exhibit #B-1: Unpublished Opinion of the Court of Appeal, p 34). Rhonda Dyas raised the issue of her being shackled throughout her trial before the Court of Appeal. Given that she had no history of violence and had not indicated any intention to disrupt the proceedings or attempt to escape, the Court of Appeal found that shackling Rhonda Dyas throughout her trial was error. (Exhibit B-1, p 14). However, the Court found the error to be harmless, holding that there was no evidence in the trial record that jurors in fact saw Rhonda Dyas shackled. Of course, because the trial court had determined that it was proper to shackle Rhonda Dyas, the trial court had held no hearings to determine any prejudice from the shackling. The appeal was based solely on the trial court's record and there was no evidence in the record to establish that jurors saw the shackles. (Id. at 13-17).

MS. DYAS HAS EXHAUSTED HER STATE REMEDIES AND THIS PETITION IS TIMELY.

In recognition of the time limitation established by the amendments to 28 U.S.C. §2244, Ms. Dyas filed a petition for habeas corpus in the California Superior Court for Riverside County on March 18, 1997. The Petition was ruled upon and denied by the Riverside County Superior Court on April 7, 1997. The Superior Court held that petitioner's claim was already decided on direct appeal in the Court of Appeal. (See Exhibit B-2: Superior Court Order re: Petition for Writ of Habeas Corpus, p. 2). On April 15, 1997, Ms. Dyas filed a habeas corpus petition in the Fourth District Court of Appeal. Her petition included the same exhibits appended to this petition, which showed that the jurors in her case saw her shackles. The Fourth District Court of Appeal of the State of California

denied the petition on April 30, 1997. The Court of Appeal cited In re Clark, 855 P.2d 729, 5 Cal. 4th 750 (1993); In re Waltreus, 397 P.2d 1001, 62 Cal. 2d 218 (1965); In re Dixon, 264 P.2d 513, 41 Cal. 2d 756 (1953); In re Merkle, 182 Cap. App. 2d 46, 5 Cal. Rptr 745 (1960) in its postcard denial. (See Exhibit B-3: Court of Appeal Order re: Petition for Writ of Habeas Corpus).

On May 9, 1997, Ms. Dyas filed a habeas corpus petition in the California Supreme Court. With the exception of facts and exhibits explaining that Ms. Dyas had not delayed in filing, Ms. Dyas made the same factual allegations raised in this petition and in the petition filed in the California Court of Appeal. Ms. Dyas' petition was denied, without comment, by the California Supreme Court on September 24, 1997. (See Exhibit A: Supreme Court of California Order re: In re Rhonda Dyas on Habeas Corpus; Exhibit B: Petition for Writ of Habeas Corpus Filed with the California Supreme Court).

Ms. Dyas' petition is timely filed within the new one-year statute of limitations. Excluding periods when her petitions were actually pending before state courts, Ms. Dyas' petition was filed within one year's time from the effective date of the amendments to 28 U.S.C. §2244, April 24, 1997.

Furthermore, Ms. Dyas' petition is not barred by any state procedural bars. The California Court of Appeal stated in its order that Ms. Dyas' petition for habeas corpus was denied and also cited In re Clark, 855 P.2d 729, 5 Cal. 4th 750 (1993); In re Waltreus, 397 P.2d 1001, 62 Cal. 2d 218 (1965); In re Dixon, 264 P.2d 513, 41 Cal. 2d 756 (1953); In re Merkle, 182 Cap. App. 2d 46, 5 Cal. Rptr 745 (1960) (See Exhibit B-3: Court of Appeal Order re: Petition for Writ of Habeas Corpus). In her petition to the California Supreme Court, Ms. Dyas addressed the reasons for her short delay in filing her petition in state court. Her reasons for delay fell under exceptions enumerated in In re Clark. She also explained why the other alleged bars did not apply. (Exhibit B).

The Supreme Court denied Ms. Dyas' petition without comment and without citation to any cases establishing a procedural bar. It is a longstanding rule of the California Supreme Court that when it intends to deny a petition based upon a procedural bar, the

Court will state the controlling law upon which the bar is based. Harris v. Superior Court, 500 F.2d 1124, 1127-28 (9th Cir., 1974). The California Supreme Court is aware of the fact that a federal court will so interpret its postcard denials and "has never indicated disagreement with Harris's interpretation of that Court's orders." Hunter v. Aispuro, 982 F.2d 344, 348 (9th Cir. 1992). The California Supreme Court's decision did not rest on any procedural bar, and this Court must conclude that it decided the case on the merits. Harris v. Reed, 489 U.S. 255 [109 S. Ct. 1038, 103 L. Ed. 2d 308] (1989). Thus, the California Supreme Court denied her petition on the merits.

The error alleged in Ms. Dyas' trial is of Constitutional magnitude and resulted in a trial that was so fundamentally unfair that it cannot be said that, absent the error, a reasonable jury would have convicted the accused. Furthermore, under the standard set forth by the United States Supreme Court in Arizona v. Fulminante, 499 U.S. 279 [111 S. Ct. 1246, 113 L. Ed. 3d 302] (1991), the error infected the entire trial such that analyzing what a hypothetical jury would have done absent the error is impossible.

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

A. The Court of Appeal Found that Shackling Rhonda Dyas During Her Trial was an Abuse of Discretion But the Record on Direct Appeal did not Indicate Whether Jurors Saw the Shackles.

Shackling a defendant during her trial is so inherently prejudicial that it is only

permissible as a last resort to protect an essential government interest. Holbrook v. Flynn, 475 U.S. 560, 568-69 [106 S. Ct. 1340, 1345-46, 89 L.Ed. 2d 525, 534] (1986); Illinois v. Allen, 397 U.S. 337, 344 [90 S. Ct. 1057, 1061, 25 L. Ed. 2d 353, 359] (1970). In determining whether shackles are appropriate, the court essentially conducts a two prong analysis. First, the court must be persuaded by compelling circumstances that shackles are necessary to maintain security. Second, the court must first pursue and assess less restrictive alternatives to shackling. Jones v. Meyer, 899 F.2d 883, 884-85 (9th Cir.), cert. denied, 498 U.S. 832 [111 S. Ct. 95, 112 L. Ed. 2d 67] (1990). The severity of the crime with which the accused is charged is not the measure of whether shackles should be used. Shackles are permissible only to prevent escape, and to maintain safety and decorum in the courtroom. Kennedy v. Cardwell, 487 F.2d 101, 105 (6th Cir.), cert. denied sub nom., Kennedy v. Gray, 416 U.S. 959 [94 S. Ct. 1976, 40 L. Ed. 2d 310] (1973).

The only reason for shackling Rhonda Dyas stemmed from the severity of the charges pending against her. (Exhibit B-1, p. 14) As the Court of Appeal correctly found, the record was insufficient to merit shackling Rhonda Dyas throughout the duration of her trial. Thus, the trial court abused its discretion when it ordered Rhonda Dyas shackled throughout her trial. The Court of Appeal did not reverse her conviction, however, because the record on appeal did not indicate whether jurors saw her shackles. The Court reasoned that Ms. Dyas could only be harmed if the shackles were seen. Id. at 16.

The findings of the Court of Appeal on Ms. Dyas' direct appeal were based only upon the factual record established in the trial court. The trial court judge did not hold an evidentiary hearing or receive other evidence to determine whether or not the shackles were visible to jurors in the courtroom. Furthermore, there was no discussion of whether the jurors were able to see Ms. Dyas in shackles when outside of the courtroom. Ms. Dyas bases her petition upon clear evidence that jurors saw her shackled outside and inside the courtroom during the trial. Whether Ms. Dyas' shackles were visible to jurors while waiting outside the courtroom was not considered at all by the Court of Appeal on direct appeal.

The shackling issue could not have been raised on direct appeal. Trial counsel made all the appropriate objections. Nonetheless, counsel could not be required to make a full record at trial of juror prejudice by questioning jurors about the shackles. That questioning would, itself, prejudice the accused by calling undue attention to the shackles. Rhoden v. Rowland, 10 F.3d 1457, 1460 (9th Cir. 1993); see also id. at 1463 (O'Scannlain, J., concurring) (questioning jurors at trial about whether they had seen the shackles "is a Catch-22. If the petitioner had asked, then attention would have been drawn to the shackles").

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

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

a. Jurors Saw Ms. Dyas in Shackles.

In determining inherent prejudice, the fundamental question is whether "an unacceptable risk is presented of impermissible factors coming into play." Estelle v. Williams, 425 U.S. 501, 505 [96 S. Ct. 1691, 1693, 48 L. Ed. 2d 126, 131] (1976) (holding that the state may not compel the accused to wear prison clothes at trial); Holbrook v. Flynn, 475 U.S. at 570-71 [106 S. Ct. 1346-47, 89 L. Ed. 2d 535-36] (holding that the presence of additional security officers is not inherently prejudicial). It is not necessary that jurors articulate that they are conscious of some prejudicial effect. Holbrook, 475 U.S. at 570 [106 S. Ct. at 1346, 89 L. Ed. 2d at 535-36]. Rather, the jurors themselves may not be fully aware of the effect seeing the accused in shackles has upon them. Id.

The underlying rationale of the rule rests with the assumption that shackling a defendant interferes with the presumption of innocence that every accused is afforded at trial, consequently denying the accused due process under the Fourteenth Amendment to the United States Constitution. Taylor v. Kentucky, 436 U.S. 478, 483-86 (1978); Spain v.

Rushen, 883 F.2d 712, 720-21 (9th Cir. 1989), cert. denied, 495 U.S. 910 [110 S. Ct. 1937, 109 L. Ed. 2d 300] (1990); Kennedy v. Cardwell, 487 F.2d at 107-111. When an accused is shackled before the jury, the presumption of innocence is placed in serious jeopardy. Spain v. Rushen, 883 F.2d at 721. Unlike the use of additional security officers, shackling the accused during trial is specifically directed at the accused and creates the impression that she is not to be trusted and should be separated from the rest of society. Holbrook v. Flynn, 475 U.S. at 569-70 [106 S. Ct. at 1346, 89 L. Ed. 2d 534-35] (holding that the presence of additional security officers in a courtroom was not inherently prejudicial since jurors may not have concluded that such arrangements are unusual and since the presence of guards did not single out the accused, and specifically distinguishing the presence of additional security officers from a situation where the accused is shackled).

Rhonda Dyas was shackled throughout her five-day trial. Unlike the situation in Holbrook, shackling Rhonda Dyas singled her out in the courtroom and created the impression that she posed a threat to others in the courtroom and was not to be trusted. Each day of her trial, Rhonda Dyas was seated at the defense table when jurors entered and exited the courtroom. The table at which she sat did not have modesty panels and was clearly visible from the entrance and center aisle of the courtroom where the jury entered and exited the courtroom. Jurors had to walk behind Rhonda Dyas when going to and from the courtroom door and the jury box.

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

The Ninth Circuit held in Spain v. Rushen, that the extent of prejudice is a function of the extent of the shackling and the chains' visibility to the jurors. 883 F.2d at 722. The greater the visibility of the chains, the greater the prejudice. Id. Each morning of her trial and after lunch recesses, Rhonda Dyas was brought down the central hallway of the Riverside courthouse shackled to other prisoners. Some of these prisoners were dressed in jail attire rather than street clothes. At all times when in the hallway, Rhonda Dyas wore both ankle shackles and waist chains. When Rhonda Dyas was brought down the public central hallway of the Riverside Courthouse in shackles there were jurors assigned to her case waiting outside the courtroom. The process by which Rhonda Dyas was brought down the hallway was conspicuous and noisy. Essentially, there was no way to avoid seeing Rhonda Dyas proceeding down the hallway and into the courtroom in shackles. Thus, in addition to seeing Rhonda Dyas shackled in the courtroom, jurors on her case were exposed to Rhonda Dyas in shackles as many as twelve times outside the courtroom --- assuming the trial spanned over six days and accounting for morning entrances and lunch recesses.

Furthermore, conduct outside the courtroom may contribute to prejudice. Among the relevant factors to be considered in assessing inherent prejudice are issues of actions potentially affecting the jury both within the courtroom as well as outside the courtroom. Norris v. Risley, 878 F.2d 1178, 1183 (9th Cir. 1989). In Norris, the court held that the fact that the jury in a rape trial had to pass through a group of at least twenty women wearing "Women Against Rape" buttons contributed to the prejudice against the defendant. Similarly, the fact that Rhonda Dyas was forced to walk shackled at the ankle and wearing waist chains past jurors waiting outside the courtroom entrance contributed to the inherent prejudice in her case and further compounded the prejudice resulting from her being shackled inside the courtroom. As the Ninth Circuit stated in Norris, "The constitutional safeguards relating to the integrity of the criminal process attend every state of a criminal proceeding, starting with arrest and culminating with a trial 'in a courtroom presided over by a judge'." Norris, 878 F.2d at 1183 (quoting Cox v. Louisiana, 379 U.S. 559, 562 [85 S. Ct.

476, 479-80, 13 L. Ed. 2d 487, 491] (1965) and Rideau v. Louisiana, 373 U.S. 723, 727 [83 S. Ct. 1417, 1419, 10 L. Ed. 2d 663, 665] (1963)).

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

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

A brief or inadvertent glance at the accused in shackles may not be sufficient to cause prejudice that interferes with the accused's presumption of innocence. Wilson v. McCarthy, 770 F.2d 1482, 1485-86 (9th Cir. 1985). This is particularly the case where the court instructs the jury that such a brief glance should be disregarded and reiterates that the jury should begin with the presumption that the accused is innocent, or in the alternative, takes other curative measures. United States v. Haliburton, 870 F.2d 557, 561-62 (9th Cir.), cert. denied, 492 U.S. 910 [109 S. Ct. 3227, 106 L. Ed. 2d 575] (1989).

The jurors assigned to Rhonda Dyas' case had no fewer than twelve opportunities to see Rhonda Dyas in shackles in the hallway of the courthouse as she entered the courtroom. Rhonda Dyas was shackled throughout the duration of her almost six-day trial. Thus, there was ample opportunity for the jurors in Rhonda Dyas' case to see her in shackles and furthermore to see her continuously restrained both inside and outside the courtroom. This situation differs significantly from the situations in Haliburton and Wilson where the jurors' opportunity to see the accused or a defense witness in restraints was very brief. In Wilson the jury only saw the defense witness in shackles as he left the witness stand. 770 F.2d at 1485. Similarly, in Haliburton the jury briefly and inadvertently saw the accused in handcuffs in the court hallway when waiting for the elevator. 870 F.2d at 559-60.

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

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

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.

In addition to jeopardizing an accused's presumption of innocence before the jury, shackling the accused also prejudices her in other ways. Shackles may interfere with the accused's mental faculties and ability to concentrate on the proceedings; they may impede

communication between the accused and her attorney; they may detract from the dignity of the proceedings; and they may be painful to the accused. Spain v. Rushen, 883 F.2d at 721. These factors should also be considered when 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 torment. The ankle shackles dug into her skin and caused sores. She was constantly in discomfort throughout the trial due to the fact that the shackles were digging into her skin. She was afraid to move her feet in an attempt to temporarily release some of the pressure from the shackles on her ankles because of her fear that the sound from the shackles when she moved would attract further attention to their presence in the courtroom.

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

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

C. The Shackling was Inherently Prejudicial and Amounts to Either Structural Error or Exceptionally Egregious Trial Error and, Thus, Relief Should be Granted.

The Supreme Court has articulated three standards of review of constitutional errors alleged in federal habeas corpus petitions. See Brecht v. Abrahamson, 507 U.S. 619 [113 S.Ct. 1710, 123 L. Ed. 2d 353] (1993). The first type of error is referred to as structural error and denotes errors which are described as infecting the entire trial process. Structural errors are reversible per se. The third type of error is termed a trial error and is subject to harmless error analysis "because it 'may be quantitatively assessed in the context of other evidence presented in order to determine [the effect it had on the trial.]'" Id. at 629

[1717, 367] (quoting Arizona v. Fulminante, 499 U.S. 379, 307-308 [111 S. Ct. 1246, 1264; 113 L. Ed. 2d 302, 330] (1991)). Trial errors are subject to harmless error analysis under Kotteakos v. United States, 328 U.S. 750 [66 S. Ct. 1239; 90 L. Ed. 1557] (1946), which held that the test is whether the error "had substantial and injurious effect or influence in determining the jury's verdict." Id. at 776 [1253, 1572]. In other words, a petitioner must demonstrate some form of actual prejudice to prevail under a harmless error analysis. Brecht, 507 U.S. at 637 [113 S. Ct. at 1722, 123 L. Ed. 2d at 373] (citing United States v. Lane, 474 U.S. 438, 449 [106 S. Ct. 725, 732, 88 L. Ed. 2d 814, 826] (1986)). The second type of error is a hybrid between the first and the third types and refers to "a deliberate and especially egregious error of the trial type." Brecht, 507 U.S. at 638, n.9 [113 S. Ct. at 1722, 123 L. Ed. 2d at 373]. These types of errors "might so infect the integrity of the proceeding as to warrant the grant of habeas relief, even if it did not substantially influence the jury's verdict." Id. This type of error is subject to a showing by the petitioner of inherent prejudice and cannot be assessed by actual prejudice analysis. Hardnett v. Marshall, 25 F.3d 875, 879-80 (9th Cir. 1994).

The shackling was structural error. Fundamental to our system of justice and the Due Process Clause of the Fourteenth Amendment to the United States Constitution is the right of the accused to be presumed innocent until proven guilty. Estelle v. Williams, 425 U.S. at 503 [96 S. Ct. at 1692, 48 L. Ed. 2d at 130]. Shackling a defendant may undermine the presumption of innocence afforded every defendant required to answer to a charge before a court. Spain v. Rushen, 883 F.2d at 721. While not all constitutional errors are reversible per se, errors which infect the entire trial process are reversible per se and thus are not subject to harmless error analysis. Arizona v. Fulminante, 499 U.S. 279, 309-311 [111 S. Ct. 1246, 1264-66, 113 L. Ed. 2d 302, 331-32] (1991). These errors include deprivation of a right to counsel, a trial judge who is not impartial, exclusion from the jury members of the defendant's race, the right to self-representation at trial and the right to a fair trial. Id. at 309-310 [1264-65, 330-32]. The 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 errors which occur while the case is being presented to the jury. Id.; Sullivan v. Louisiana, 508 U.S. 275, 281 [113 S. Ct. 2078, 2082-83, 124 L. Ed. 2d 182, 190] (1993). The difference is that trial errors may be assessed against other evidence presented to determine whether or not they were harmless beyond a reasonable doubt. Fulminante, 499 U.S. at 307-08, 310 [111 S. Ct. at 1263-64, 1265, 113 L. Ed. 2d at 329-30, 331-32].

While the United States Supreme Court has not specifically categorized shackling as either a trial error or a structural defect, shackling a defendant infects the entire trial process since it undermines the presumption of innocence afforded the accused. As such, it functions more as a structural defect than as a discrete trial error where it is possible to assess the other evidence to determine if the error was harmless beyond a reasonable doubt. The resultant prejudice from shackling a defendant throughout her trial and exposing the jury to the defendant shackled outside the courtroom each time court reconvened after an evening or lunch recess cannot fairly be weighed against the evidence presented in the case. Shackling a defendant, where it is found to be an abuse of discretion, is not evidence of anything relating to the defendant's guilt or innocence that can be placed into a formulaic assessment against other evidence adduced at trial. In this key respect, unwarranted shackling differs from other errors found by the United States Supreme Court to be trial errors.[1]

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1. The Court in Fulminante listed the following examples of errors which would constitute trial error subject to the Chapman standard: unconstitutionally overbroad jury instructions at the sentencing stage of a capital case; admission of evidence at the sentencing stage of a capital case in violation of the Sixth Amendment; jury instruction containing an erroneous conclusive presumption; jury instruction misstating an element of the offense; jury instruction containing an erroneous rebuttable presumption; erroneous exclusion of defendant's testimony regarding the circumstances of his confession; restriction on a 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

As such, shackling Ms. Dyas throughout her trial is error that, per se requires the petition be granted.

Alternatively, even if the Court rules that shackling Ms. Dyas is not a structural error, the shackling was so extensive and the jury's opportunities to view the shackles so numerous that the error is, at a minimum, an egregious trial error of the hybrid type discussed by the Supreme Court in Brecht. 507 U.S. at 638 n.9 [113 S. Ct. at 1722, 123 L. Ed. 2d at 373]. The jurors had numerous opportunities to see Ms. Dyas in shackles. The evidence against her was scant and amounted to two different versions of the same events. This differs greatly from what the Brecht court found as simple trial error in that case. In Brecht, the alleged error was use of the defendant's post-Miranda silence as impeachment when the defendant took the stand. The Court noted in Brecht the "the State's reference to the petitioner's post-Miranda silence were infrequent," and that the evidence against the defendant was "if not overwhelming, certainly weighty." 507 U.S. at 639 [113 S. Ct. at 1722, 123 L. Ed. 2d at 374].

Conversely, in Ms. Dyas' trial she was shackled throughout the trial and was in the hallway in shackles each time court convened or reconvened. Thus, the opportunities for jurors to see Ms. Dyas in shackles were not only frequent, they were constant. The shackles were there as a constant reminder that Ms. Dyas was not to be trusted and was incarcerated at the time of her trial. Furthermore, in a situation where the prosecution argued Ms. Dyas' guilt under an aiding an abetting theory, and witnesses testified to essentially two versions of the same story, unlike the situation in Brecht, the evidence against Ms. Dyas was neither overwhelming nor weighty. Consequently, the proper standard for determining whether Ms. Dyas was prejudiced when she was shackled is whether "what the jurors saw was so inherently prejudicial as to pose an unacceptable threat

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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 [111 S. Ct. at 1262-63, 113 L. Ed. 2d at 328-330].

to defendant's right to a fair trial." Holbrook v. Flynn, 475 U.S. at 572 [106 S. Ct. at 1347, 89 L. Ed. 2d 537].

Rhonda Dyas was charged under an aiding and abetting theory. There was no evidence that she participated directly in the death of the victim. Furthermore, the jury deliberated for over three days after a trial which lasted roughly six days. The physical and emotional torment from being shackled made it difficult for Rhonda Dyas to concentrate on the trial and her defense. After a five-day trial, the jury deliberated for almost three days. This is a relatively long time for jury deliberations given the length of the trial. People v. Cardenas, 647 P.2d 569,574 [31 Cal.3d 897, 907] (1982) (holding that twelve hours of deliberation indicates a close case).

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

In addition, the Court of Appeal has already held that shackling Rhonda Dyas during her trial was an abuse of discretion. This fact coupled with the extended period of time she was shackled before the jury both inside and outside of the courtroom and the fact that the case was a close one renders the error of shackling Ms. Dyas inherently prejudicial. Furthermore, the physical and emotional torment from being shackled made it difficult for Rhonda Dyas to concentrate on the trial and her defense.

Thus, in a situation where, as here, the shackling was so extensive and pervasive as to infect the trial from voir dire to the verdict, shackling Ms. Dyas cannot be fairly assessed against the other evidence presented at trial. There is no way to find that the guilty verdict was unattributable to the fact that Ms. Dyas was shackled before the jury both inside and

outside the courtroom. Actually, there is simply no way to determine the effect shackling Ms. Dyas before the jury both inside and outside the courtroom had on the rest of the trial process. Consequently, at a minimum, the shackling was a hybrid type trial error infecting the "integrity of the proceeding as to warrant the grant of habeas relief." Brecht, 507 U.S. at 638 n.9 [113 S. Ct. at 1722, 123 L. Ed. 2d at 373].

Whether it is deemed to be structural error or exceptionally egregious trial error, relief should be granted.

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.

An accused has a right to have defense witnesses testify without shackles, except in circumstances where there is danger of harm or escape. Kennedy v. Cardwell, 487 F.2d at 105, n.5. The reason for the rule is to avoid the inherent prejudice to the defendant resulting from the jury suspecting the witness' credibility when that witness testifies in shackles. Id.

The Court in Kennedy stated that witnesses should be allowed to "appear free of shackles, except in special circumstances where there is evident danger of escape or harm." Id. The language, "danger of escape" implies that the opinion refers to in-custody witnesses. Thus, additional prejudice to a witness' credibility results from shackling over and above what flows from mere incarceration.

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

Although Willie Dyas was called by the prosecution, he was ordered out of state

prison by the defense and was originally scheduled to testify for the accused, Rhonda Dyas. The testimony offered by Willie Dyas with respect to Rhonda Dyas substantially conflicted with the testimony of a key prosecution witness, Tina Boyd. As such, the fact that Willie was called first by the prosection should not affect the applicability of the Kennedy Court's holding. The substance of his testimony regarding Rhonda Dyas was beneficial to her case. Furthermore, the Court did not instruct the jury that they were to disregard the fact that Willie Dyas was in shackles and jail attire prior to his testimony. Actually, no precautions were taken to avoid prejudicing Rhonda Dyas when Willie Dyas testified in spite of the fact that he was the accused's husband, further increasing any prejudice that might result from his testifying in shackles.

CONCLUSION

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

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Respectfully submitted,

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