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1. Shackled Defendant Denied Fair Trial, Circuit Concludes

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Body

Numerous errors by a trial judge that included shackling a woman defendant with no criminal record during trial has led a federal appeals court to vacate her conviction for smuggling ecstasy over the border from Canada to the United States.

The U.S. Court of Appeals for the Second Circuit said there were a number of reasons for reversing the conviction of Tara Haynes after a trial before Northern District Judge Mae D'Agostino ([See Profile](#)) in 2011.

Among them, the circuit said, were an improper and incomplete Allen charge to the jury after only a short period of deliberations, the failure to investigate potential jury misconduct and "serious evidentiary errors" that, taken together, "undermined the guarantee of fundamental fairness to which the defendant is entitled."

Haynes, a 35-year-old mother of two, is serving 15 years and 8 months in prison for transporting some 70,000 ecstasy pills in the gas tank of her rental car through the Champlain Port of Entry in New York on June 2, 2011.

The decision in [United States v. Haynes](#), 12-626-cr, was issued by Circuit Judges Robert Sack ([See Profile](#)), Raymond Lohier ([See Profile](#)) and, sitting by designation, Southern District Judge John Koeltl ([See Profile](#)) on Thursday.

At oral arguments before the court on March 8, the judges, concerned that Haynes was shackled at the ankles during trial, including when she took the witness stand, asked the government to supplement the record by describing the Northern District's policy on the shackling of defendants.

The government provided a letter to the court saying the Marshals Service advised it that "defendants are neither routinely nor arbitrarily shackled during jury trials."

Judges in the Northern District, the government said, take into account any security concerns raised by the marshals and "every precaution is taken to ensure that those shackles are not visible to the jury."

One judge told the government he informs the defendant of the reasons for shackling and gives the defendant an opportunity to be heard, but "other judges," the letter states, "do not create a record of their determinations; a record would be created if the defendant raised an objection to the use of shackles."

The Second Circuit was not pleased with the answer.

"The general procedures, to the extent they were accurately portrayed to this Court, do not conform to the requirements of clear Supreme Court and Second Circuit precedent," Koeltl wrote for the panel. "No physical restraints may be imposed on a criminal defendant during trial unless the District Court finds on the record that they are a necessary last resort."

"In this case, there is no suggestion and certainly no finding on the record why it was necessary to shackle the defendant, who had no prior criminal history," Koeltl said.

Another problem arose when defense counsel Brian Barrett of Lake Placid spoke to an alternate juror who had been dismissed from the case.

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Barrett told the court the alternate told him "some of the women on the jury had said that [Haynes] might be guilty, she's here."

Barrett said he would be derelict not to ask for a mistrial, but D'Agostino denied the motion, commenting: "I'm not saying that the information that you're getting isn't accurate. I'm just saying that no juror brought anything like that to my attention."

Koeltl said the trial judge should have inquired further.

"The alleged comments of the jurors as represented by defense counsel raise two concerns, Koeltl said, (i) that the members of the jury were actually biased against the defendants; and (ii) that the jury deliberated prematurely in violation of the Judge's instructions not to deliberate until they had heard all the evidence and were instructed on the law."

"Faced with a credible allegation of juror misconduct during trial, a court has an obligation to investigate and, if necessary, correct the problem," he said.

The court then turned to the Allen charge, which is sometimes read to jurors who have reached a deadlock. In this case, the jurors reported a deadlock after only four hours on a Friday afternoon.

In an Allen charge, a judge urges the jurors to redouble their efforts, keep an open mind and listen to the views of their fellow jurors. Allen charges have led to vacated convictions where the instruction is seen as coercive, so it is crucial that judges include an instruction that jurors are allowed to adhere to their conscientiously held beliefs.

Here, the judge told the jury "I believe that on Monday, after you've had a restful weekend and are given instructions by me, when you retire into the jury deliberation room and you give each other fair and full consideration, you will be able to arrive at a just verdict."

The circuit said that D'Agostino's Allen charge fell short, because she failed to give an admonition to the jurors not to surrender their conscientiously held beliefs.

"A reasonable juror could view this instruction as lending the Court's authority to the incorrect and coercive proposition that the only just result was a verdict," Koeltl said. "However, a verdict is just only if it represents the conscientiously held beliefs of all jurors."

The circuit also faulted two evidentiary verdicts. The first was when D'Agostino allowed an officer to give lay opinion testimony as to how the fuel tank in the rental car functions-the fuel light said empty but there were four to five gallons of gas inside, indicating an object was driving the measuring device to the bottom.

The second was allowing an agent's testimony on why the defendant, whose defense was that she was a "blind mule" with no knowledge she was carrying drugs, must have known she was in possession.

Marc Fernich and Jonathan Savella of the Law Office of **Marc Fernich** represented Haynes.

Fernich said Thursday the case was a "perfect storm" of errors, any one of which could have tipped the balance in a "short trial" with a "sympathetic defendant."

Fernich says he taught the case to his students at Brooklyn Law School, where he teaches appellate practice and will continue to do so.

"I'm sending out this opinion to them," he said of his students.

Assistant U.S. Attorneys Julie Pfluger and Paul Silver represent the government.

The circuit remanded the case to D'Agostino for further proceedings.

D'Agostino was confirmed to the Northern District bench in March 2011.

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