

ORIGINAL

FILED

15 AUG 19 AM 10:37

CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS

BY  DEPUTY

1 PRECILIANO MARTINEZ
2 State Bar No. 93253
3 1120 14th St. #5
4 Modesto, California 95354
5 Telephone: (209) 579-2206
6 Facsimile: (209) 579-2211

7 Attorney for Defendant
8 FRANK CIFFORD CARSON

9 **THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF STANISLAUS**

11 THE PEOPLE OF THE STATE OF
12 CALIFORNIA,

13 Plaintiff,

14 vs.

15 FRANK CIFFORD CARSON,

16 Defendant.

Case No. 1490969

**DEFENDANT'S MOTION TO PERMIT
ACCUSED TO APPEAR
IN CIVILIAN CLOTHING AND
WITHOUT RESTRAINTS
AT ALL PROCEEDINGS**

DATE: August 25, 2015
TIME: 9:00 a.m.
DEPT: TBA

17 **TO THE DISTRICT ATTORNEY OF STANISLAUS COUNTY:**

18
19
20
21 **PLEASE TAKE NOTICE** that on August 25, 2015, at 8:30 am, or soon thereafter as
22 the matter will be heard, in department _____ of the above-entitled court, defendant,
23 FRANK CIFFORD CARSON (hereinafter, "Movant"), by and through counsel, will and
24 hereby does, move the court for an order permitting the accused to appear in civilian clothing
25 and without restraints at all proceedings.

26
27 Defendant respectfully moves this Court for an order permitting Defendant to appear at all
28 in-court proceedings (including all pre-trial hearings at which Defendant appears in court) in

AV

1 civilian clothes instead of a jail uniform and without restraint by any means, including shackles
2 or a stun belt. In addition, once trial begins, Defendant requests that measures be taken to ensure
3 that the jurors never see him in restraints in or out of the courtroom.

4 If this Court is not inclined to grant the instant motion on the record as it now stands,
5 Defendant requests an evidentiary hearing to adduce evidence on the question whether there is a
6 particularized justification for restraining Defendant (or requiring Defendant to appear in jail
7 clothes).
8

9 MEMORANDUM IN SUPPORT

10 The presumption of innocence is a basic component of the fundamental right to a fair
11 trial. See Coffin v. United States, 156 U.S. 432, 453 (1895). “The presumption of innocence
12 requires the garb of innocence, and regardless of the ultimate outcome, or the evidence
13 awaiting presentation.” Kennedy v. Cardwell, 487 F.2d 101, 104 (6th Cir. 1973) (citation
14 omitted). “[E]very defendant is entitled to be brought before the court with the appearance,
15 dignity, and self-respect of a free and innocent man.” Id.
16

17 **1. Appearing in Civilian Clothing**

18 Defendant is presently incarcerated and will remain so throughout the duration of the
19 proceedings before this Court. Unless the Court orders Defendant’s custodians to permit a
20 change into civilian clothing before Court appearances, the right to receive a fair trial will be
21 impermissibly infringed upon. If Defendant appears in jail clothing at any pre-trial proceeding
22 covered by either television or print media, and is displayed to prospective jurors in jail clothing,
23 they will naturally be led to doubt the presumption of innocence and Defendant’s constitutional
24 rights to a fair trial will be undermined. In Estelle v. Williams, 425 U.S. 501 (1976), the Court
25 emphasized that “the constant reminder of the accused’s condition implicit in such distinctive,
26
27
28

1 identifiable attire may affect a juror's judgment." Id. at 504-05. Although that case concerned
2 jail garb during trial, the principle applies with equal force when prospective jurors are tainted by
3 pretrial publicity depicting Defendant in jail garb.

4 **2. Appearing Without Restraints**

5 Defendant contends that there are no facts specific to this case that would justify
6 restraint in any manner during trial—including by means of a stun belt, hand restraints, leg
7 restraints, or other similar confinement. "The Fifth and Fourteenth Amendments [of the United
8 States Constitution] prohibit the use of physical restraints visible to the jury absent a trial court
9 determination, in the exercise of its discretion that they are justified by a State interest specific
10 to a particular trial." Deck v. Missouri, 544 U.S. 622, 629 (2005). "[G]iven their prejudicial
11 effect, due process does not permit the use of visible restraints if the trial court has not taken
12 account of the circumstances of the particular case." Id. at 632.

13
14
15 Deck recognized the serious concerns of a capital defendant at both the trial and penalty
16 phases of trial. During the trial phase, the defendant has an interest in appearing free of
17 restraints in order to preserve the presumption of innocence, due process rights, and effective
18 assistance of counsel. However, should Defendant be found guilty at the trial phase, the
19 interest remains because, "[a]lthough the jury is no longer deciding between guilt and
20 innocence, it is deciding between life and death. That decision, given the 'severity' and
21 'finality' of the sanction, is no less important than the decision about guilt." Id.

22
23
24 The Federal and the State Constitutions guarantee a criminal defendant the right to
25 effective assistance of counsel. U.S. Const. amends. VI, XIX; Gideon v. Wainwright, 372 U.S.
26 335, 340-41, (1963). "The use of physical restraints diminishes that right. Shackles can
27 interfere with the accused's 'ability to communicate' with his lawyer. Indeed, they can
28

1 interfere with a defendant's ability to participate in his own defense, say by freely choosing
2 whether to take the witness stand on his own behalf.” Deck, 544 U.S. at 631.

3 Defendant specifically asserts that there is no justification for restraining him with a
4 stun device. Stun devices might be marginally less evident to observers; but they have an even
5 greater chilling effect on the accused’s ability to communicate with counsel because the fear of
6 a debilitating electric shock excessively restrains Defendants from moving at counsel table for
7 fear of being zapped by a deputy too quick to pull the trigger. And no matter the physical and
8 psychological differences between stun devices and shackles, any restraining device runs afoul
9 of Defendant’s constitutional rights absent a factual basis to justify restraining Defendant in
10 any manner whatsoever. (The decision to use a stun belt must be subjected to at least the same
11 close judicial scrutiny required for the imposition of other physical restraints; if not, reversal is
12 warranted).

15 The decision to use restraints is committed to the sound discretion of the trial court.
16 But because their use is an “inherently prejudicial practice, restraints may be employed only as
17 a ‘last resort.’” Holbrook v. Flynn, 475 U.S. 560, 568-69 (1986). When exercising this
18 discretion, the court *must* hold a hearing to determine whether such measures are necessary.
19 Id. at 569. The trial court must make a finding justifying restraint that entails more than mere
20 deference to the opinion or customs of the law enforcement personnel charged with keeping
21 the accused in custody

24 There is also substantial prejudice if Defendant is required to appear in restraints during
25 the pre-trial proceedings. The harm is no less serious merely because the jury has yet to be
26 empanelled. If Defendant appears in restraints during pre-trial proceeding covered by the
27 media, the viewing public, from which the jury will be selected, will be led to a presumption of
28

1 Defendant's guilt. Moreover, the prospective jurors will likely infer that Defendant is
2 restrained because he is dangerous.

3 Providing adequate and routine courtroom security serves as a reasonable alternative to
4 restraining Defendant, but only if the number of security personnel is not so great as to convey
5 to the jurors the same unconstitutional message conveyed by restraints.
6

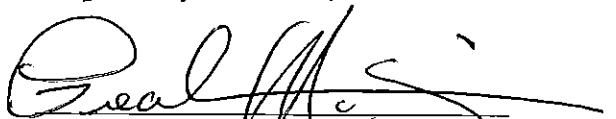
7 **4. Conclusion.**

8 Defendant requests this Court allow him to appear in ordinary civilian clothes and
9 without restraints at all in-court proceedings, and any other time the media or jurors might
10 view Defendant.
11

12 This motion is based upon the pleadings, files and records in this case, the
13 accompanying Memorandum of Points and Authorities, and such other evidence as will be
14 presented at the hearing on this motion.

15 DATED: 4/18/2014

Respectfully submitted,

16
17 
18 PRECILIANO MARTÍNEZ, Attorney for the
19 Defendant
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I declare that I am over the age of eighteen (18), not a party to the above-referenced action, and my business address is 1120 Fourteenth Street, Suite 5, Modesto. California 95354.

On the date shown below, I

_____ deposited in the United States Mail, or

personally served the following:

**DEFENDANT'S MOTION TO PERMIT ACCUSED TO APPEAR IN CIVILIAN
CLOTHING AND WITHOUT RESTRAINTS AT ALL PROCEEDINGS;
FRANK C. CARSON; CASE NO. 1440911**

On the following parties:

STANISLAUS COUNTY SUPERIOR COURT
800 11th Street
Modesto, CA 95354

STANISLAUS COUNTY DISTRICT ATTORNEY
832 12th Street, Room 300
Modesto, CA 95354

I declare under the penalty of perjury that the foregoing is true and correct.

Signed this 19TH of August, 2015, at Modesto, California.



Mayra Mendoza