

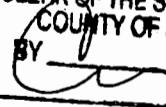
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Attorney for Defendant
GEORGIA DEFILIPPO

FILED
AUG 18 2015
CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS
BY  DEPUTY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF STANISLAUS

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

Case No.
[Booking No. 1376531]

vs.

GEORGIA DEFILIPPO,
Defendant.


MOTION AND [PROPOSED]
ORDER LIMITING
USE OF SHACKLES

COMES NOW DEFENDANT, Georgia Defilippo, through counsel, seeking an order enjoining the Stanislaus County Jail/Sheriff's Department from the unnecessary use of shackles during attorney visits.

This motion is based on the accompanying points and authorities; declaration of counsel; and declaration of Ms. Defilippo.

Dated: August 17, 2015

Respectfully submitted,


TIM A. PORI
Attorney for Defendant
GEORGIA DEFILIPPO

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 INTRODUCTION

3 Ms. Defilippo was arrested on or about August 14, 2015, pursuant to a *Ramey* warrant,
4 for ostensible violations of Penal Code sections 187(a), murder in the first degree; 190.2(a)(15),
5 special circumstance: lying in wait; 12022(d)[sic], firearm enhancement; 182(a)(5), conspiracy;
6 and 236, false imprisonment.¹

7 Ms. Defilippo is unlawfully restrained, by virtue of a “no bail” clause, contrary to Article
8 I, section 12 of the California Constitution.

9 The undersigned visited Ms. Defilippo in the Stanislaus County Jail on August 15, 2015.
10 Despite the fact that Ms. Defilippo has no prior criminal or history of violence, and has given no
11 indication of being a security risk, she was brought to the interview cell in full shackles, with her
12 wrists painfully bound together. In addition to suffering physical pain, Ms. Defilippo’s
13 movements were constrained to such a degree that she could not use her hands in any fashion.
14 (*See* Declaration of Counsel, herewith; *see also* Declaration of Georgia Defilippo, herewith.)

15 When the undersigned inquired about the unnecessary and excessive restraint, jail staff
16 advised of the County’s blanket policy of shackling inmates, regardless of whether they present
17 a genuine security risk, or not. (*See* Declaration of Counsel.)

18 ARGUMENT

19 I.

20 THE BLANKET SHACKLING POLICY VIOLATES MS.
21 DEFILIPPO’S RIGHT TO DUE PROCESS OF LAW.

22 The status of a detainee “determines the appropriate standard for evaluating conditions of
23 confinement.” (*Gary H. v. Hegstrom*, 831 F.2d 1430, 1432 (9th Cir. 1987).) While the Eighth
24 Amendment’s “cruel and unusual punishments” clause applies to those convicted of crimes, “the
25 more protective fourteenth amendment standard applies to conditions of confinement when
26 detainees . . . have not been convicted.” (*Id.*)

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28

 1/ Ms. Defilippo contests the allegations, which are not supported by probable
cause, based upon her review of the 325-page *Ramey* affidavit.

1 Case law is well-settled as to the requisite inquiry and showing before a defendant can be
2 physically restrained in the courtroom: “[A] defendant cannot be subjected to physical restraints
3 of any kind in the courtroom while in the jury’s presence, unless there is a showing of a manifest
4 need for such restraints.” (*People v. Duran* (1976) 16 Cal.3d 282, 290–291; see also Pen. Code,
5 § 688 [“No person charged with a public offense may be subjected, before conviction, to any
6 more restraint than is necessary for his detention to answer the charge”].)

7 “ ‘Manifest need’ arises only upon a showing of unruliness, an announced intention to
8 escape, or ‘[e]vidence of any nonconforming conduct or planned nonconforming conduct which
9 disrupts or would disrupt the judicial process if unrestrained.’ ” (*People v. Cox* (1991) 53 Cal.3d
10 618, 651, quoting *Duran, supra*, at 292, fn. 11.)

11 The decision whether to shackle a defendant may not be delegated to security or law
12 enforcement personnel; the trial court must make its own determination regarding restraints.
13 (*People v. Hill* (1998) 17 Cal.4th 800, 841.) “Moreover, ‘[t]he showing of nonconforming
14 behavior ... must appear as a matter of record.... The imposition of physical restraints in the
15 absence of a record showing of violence or a threat of violence or other nonconforming conduct
16 will be deemed to constitute an abuse of discretion.’ ” (*Cox, supra*, at 651, quoting *Duran,*
17 *supra*, at 291) The burden is on the People to establish in the record the manifest need for the
18 shackling. (*People v. Prado* (1977) 67 Cal.App.3d 267, 275.)” (*People v. Miller* (2009) 175
19 Cal.App.4th 1109, 1113-14.)

20 The California Supreme Court identified several constitutional issues concerning
21 physical restraint of the criminally accused in *People v. Harrington* (1871) 42 Cal. 165, and
22 later in *People v. Duran* (1976) 16 Cal.3d 282. Shackling a criminal defendant ‘imposes
23 physical burdens, pains and restraints upon a prisoner during the progress of his trial, inevitably
24 tends to confuse and embarrass his mental faculties, and thereby materially to abridge and
25 prejudicially affect his constitutional rights of defense....’ ” (*People v. Duran, supra*, 16 Cal.3d
26 at 288, quoting *People v. Harrington* (1871) 42 Cal. 165, 168.)

27 Shackling prejudicially affects the defendant’s constitutional right to be presumed
28 innocent as well as the defendant’s right to present and participate in the defense. (*People v.*

1 *Duran, supra*, 16 Cal.3d at 290; *People v. Harrington, supra*, 42 Cal. at 168.).

2 In *People v. Fierro*, the California Supreme Court repeated that the *Harrington* rule of
3 “evident necessity” serves not merely to insulate the jury from prejudice, but to maintain the
4 composure and dignity of the individual accused, and to preserve respect for the judicial system
5 as a whole; these are paramount values to be preserved irrespective of whether a jury is present
6 during the proceeding. **Moreover, the unjustified use of restraints could, in a real sense,**
7 **impair the ability of the defendant to communicate effectively with counsel** (*People v.*
8 *Harrington, supra*, 42 Cal. at 168). (*People v. Fierro* (1991) 1 Cal.4th 173, 219-20 (overruled
9 on other grounds by *People v. Letner* (2010) 50 Cal.4th 99, 206).) (Emphasis added.)

10 The Ninth Circuit concluded that a general policy of shackling a defendant for a
11 proceeding in front of a judge does not violate due process in *United States v. Howard*, 480 F.3d
12 1005 (9th Cir. 2007). The Court observed that “[n]early all of the litigation concerning shackled
13 defendants arises in the context of proceedings in front of a jury”, and the foreseeably prejudicial
14 effect on the jurors. (*See id.* at 1012.) “Thus, the general rule is that a court may not order a
15 defendant to be physically restrained” absent “compelling circumstances that some measure is
16 needed to maintain security of the courtroom,” and upon consideration of “less restrictive
17 alternatives”. (*See id., quoting Gonzalez v. Plier*, 341 F.3d 897, 900 (9th Cir. 2003) [internal
18 citations/quotations omitted].

19 Importantly, the Ninth Circuit reasoned that:

20 [T]he security concerns addressed by this policy emerge due to the Central District [of
21 California]'s practice of conducting proceedings in a large courtroom . . . in the presence
22 of multiple defendants, where the risks of conflict, violence, or escape are heightened.
The policy was instituted following consultation with the Marshals Service, which is
charged with providing for the security of the United States courts.

23 ***

24 The policy leaves in place the option for a defendant to move the court for removal of the
25 shackles, and an individualized determination may be made at the time of the motion as
26 to whether extenuating circumstances warrant removal of the shackles. We further note
that understaffed security officers must provide courtroom security in a large and
unsecured space.

27 (*See id.* at 1013-1014.)

28 In contrast, here, Ms. Defilippo challenges the County’s policy of forcing a pretrial

1 detainee to remain fully shackled in the controlled environment of an attorney/client visit. The
2 undersigned hereby waives any potential claim of liability, in the unlikely event that Ms.
3 Defilippo suddenly becomes violent or otherwise places counsel in any dangerous situation.²

4 Also instructive is *Tiffany A. v. Superior Court*, 150 Cal. App. 4th 1344 (2nd Dist. 2007),
5 addressing the policy of shackling minors during juvenile court proceedings:

6 [T]he potential harms resulting from an unjustified use of physical restraints relate
7 directly to the constitutional values—the right to present a defense and the presumption
8 of innocence—that the due process clause was intended to protect. Because these
9 important values and others, including the integrity of the judicial system, are at stake,
10 we conclude a court must make an individual determination of need for the use of
11 physical restraints inside the courtroom.

12 *See id.* at 1360.

13 Here, the pain, discomfort, and distraction of the unnecessary shackling policy
14 impermissibly interferes with Ms. Defilippo's Fifth and Fourteenth Amendment right to due
15 process of law, and her Sixth Amendment right to counsel. The policy effectively forces her to
16 choose between continuing the legal visit or terminating it, in exchange for the cessation of pain.
17 Additionally, she cannot pass legal documents back and forth with her counsel; take notes; turn
18 pages; or sign documents. Because there is no individualized showing of necessity, the blanket
19 policy of full shackling during attorney visits is unwarranted, abhorrent, and punitive. (*See*
20 *Declarations, herewith.*)

21 II.

22 THE SHACKLING POLICY ALSO 23 CONSTITUTES EXCESSIVE FORCE.

24 As applied to Ms. Defilippo, Stanislaus County's shackling policy results in the
25 "unnecessary and wanton infliction of pain." (*See Jeffers v. Gomez*, 267 F.3d 895, 910 (9th Cir.
26 2001). In a prison setting, whether force used by officials was excessive is determined by
27 inquiring if the "force was applied in a good-faith effort to maintain or restore discipline, or

28 ^{2/} *See, e.g.*, Title 15 of the California Code of Regulations, section 3304:
[California State Prison] "Employees must not permit inmates or others to use hostages to
escape from custody or otherwise interfere with orderly institutional operations. Hostages will
not be recognized for bargaining purposes. All inmates, visitors and staff will be informed of
this regulation." [Emphasis added.]

1 maliciously and sadistically to cause harm."³ (*See Hudson v. McMillian*, 503 U.S. 1, 6-7
2 (1992).)

3 Relevant considerations include the need for application of force; the relationship
4 between that need and the amount of force applied; the extent of the injury inflicted; the extent
5 of the threat to the safety of staff and inmates as reasonably perceived by prison officials; and
6 any efforts made to temper the severity of the response. (*See Whitley v. Albers*, 475 U.S. 312,
7 321 (1976).)

8 The restraint at issue here cannot be justified as a "a good-faith effort to maintain or restore
9 discipline", but rather, "maliciously and sadistically" causes harm.

10

11

CONCLUSION

12 There is no evidence that Stanislaus County's policy of restraining pretrial detainees in
13 full shackles during attorney visits is necessary or appropriate. Ms. Defilippo prays that the
14 Court enjoin the Sheriff's Department from this policy, absent a particularized showing of need
15 and less draconian alternatives. At a minimum, she seeks such injunction as to her. If
16 necessary, she respectfully seeks an evidentiary hearing.

17 Dated: August 17, 2015

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Respectfully submitted,

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TIM A. PORI
Attorney for Defendant
GEORGIA DEFILIPPO

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3/ As stated above, a pretrial detainee is entitled to a more protective standard than
an individual who has been convicted.

DECLARATION OF COUNSEL

I, Tim A. Pori, hereby state and declare:

1. I am an attorney licensed to practice law in the State of California.

2. On August 15, 2015, I met with Ms. Defilippo at the Stanislaus County Jail, and she expressed her desire that I represent her in the above matter.

3. During our meeting, Ms. Defilippo was handcuffed and shackled in a manner causing her physical pain and distraction, based on my information and belief, and also on my independent personal observations.

4. She was distracted to a degree that her ability to participate in her own defense was compromised.

5. The manner of restraint fully impaired her ability to use her hands - or even one hand - such that she was incapable of passing papers back and forth; turning pages of documents; or taking notes during our attorney/client visit.

6. I asked a custodial officer if the full shackling and double handcuffing was necessary for an attorney/client interview, and was told that it was jail policy.

7. In my 18 years in criminal practice - including representation of clients facing murder/special circumstance charges - I have never encountered this type of restraint of my client during a legal visit, in any jurisdiction.

8. Ms. Defilippo has no prior criminal or history of violence, and has given no indication of being a security risk

9. I have zero concern that I would be placed in any danger if Ms. Defilippo's handcuffs were removed for our legal visits, and hereby waive any prospective claim of liability directly resulting therefrom.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 17th day of August, 2015, at San Francisco, California.


TIM A. PORI

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DECLARATION OF GEORGIA DEFILIPPO

I, Georgia Defilippo, hereby state and declare:

1. I am presently in custody of the Stanislaus County Jail, without the possibility of bail.
2. During attorney visits I am restrained by leg irons chains around my ankles and a chain around my waist, attached to wrist-locking devices tightly-clamped on my wrists.
3. Inside the visiting cell, I am chained to a short metal stool.
4. The hand restraints prevent me from turning a piece of paper, let alone writing.
5. The hand restraints cut into my wrists with even the slightest movement, and are extremely painful.
6. The pain lasts longer than the handcuffs are on.
7. I am forced to choose between meeting with my attorney and alleviating pain.
8. As a result of my hand restraints, I have a difficult time concentrating on my conversation with Mr. Pori, which leaves me feeling frustrated, anxious, and in despair.
9. I suffer from high blood pressure and swelling in my hands and feet, which the wrist restraints exacerbate, along with my anxiety, frustration, and despair.

I declare under penalty of perjury that the foregoing is true and correct. Executed this ___ day of August, 2015.



GEORGIA DEFILIPPO

PROOF OF SERVICE

The undersigned declares:

I am a citizen of the United States. My business address is 506 Broadway, San Francisco, California 94133. I am over the age of eighteen years and not a party to the within action.

On the date set forth below, I caused a true copy of the within:

MOTION AND [PROPOSED] ORDER LIMITING USE OF SHACKLES

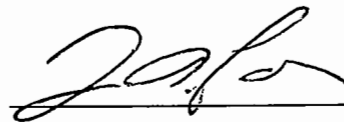
to be served on the following parties in the following manner:

Mail ___ Overnight mail ___ Personal service X Fax ___

Office of the District Attorney
Stanislaus County
832 12th Street, Ste. 300
Modesto, CA 95354

Stanislaus County Counsel
1010 10th Street, Ste. 6400
Modesto, CA 95354

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is executed on August 18, 2015, at San Francisco, California.

A handwritten signature in cursive script, appearing to read 'J. J. J.', written over a horizontal line.

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