

IN THE DISTRICT COURT, FRANKLIN COUNTY KANSAS

STATE OF KANSAS,)
 Plaintiff,)
 v.)
 KYLE FLACK,)
 Defendant.)

Case No. 13 CR 104

MOTION FOR ACCUSED TO APPEAR DURING TRIAL WITHOUT RESTRAINTS

COMES NOW the Defendant, by and through his counsel, and hereby respectfully moves this Court to enter an order permitting him to appear during the trial of this matter, without restraints, and to keep the public and media from viewing him in restraints. In support of this motion, the Accused states the following:

1. The Accused is charged with capital murder.
2. There is no reason for this Court to believe that the Accused poses an extraordinary risk of danger or flight, nor any other good cause for subjecting the Accused to restraints in the courtroom setting.
3. Requiring the Accused to display himself in restraints impairs the presumption of innocence, an essential component of due process of law, thereby violating the Accused's right to due process of law, as guaranteed by the Fourteenth Amendment to the United States Constitution and § 18 of the Kansas Bill of Rights.
4. Requiring the Accused to display himself in restraints will violate the Accused's right to trial before a fair and impartial jury, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and §§ 10 and 18 of the Kansas Bill of Rights.

Doc #282

5. Subjecting the Accused to restraints will also interfere with his ability to assist in his defense, thereby violating the Accused's right to effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and §§ 10 and 18 of the Kansas Bill of Rights.

Memorandum of Law

The Constitution of the United States guarantees an accused the right to a fair trial by an impartial jury. The United States Supreme Court, in Illinois v. Allen, 397 U.S. 337, 344, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970), has stated:

no person should be tried while shackled and gagged except as a last resort. Not only is it possible that the sight of shackles and gags might have a significant effect on the jury's feelings about the defendant, but the use of this technique is itself something of an affront to the very dignity and decorum of judicial proceedings that the judge is seeking to uphold.

The Kansas Supreme Court has stated that "[a] defendant in a criminal case should not be tried while in handcuffs or shackles except in unusual, compelling, and exceptional circumstances." State v. Williams, 228 Kan. 723, Syl. ¶ 7, 621 P.2d 423 (1980). The use of shackles would remove the indicia of innocence to which the Accused is entitled to during the trial.

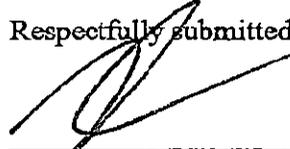
Shackles, like prison clothes, *see Estelle v. Williams*, 425 U.S. 501, 96 S.Ct. 1691, 48 L.Ed.2d 126 (1976), are a constant reminder of the Accused's condition, which may affect a juror's judgment. Shackling indicates a need to separate an accused from the community at large. The shackling of an accused at trial could be interpreted by the jury to mean that the accused is particularly dangerous or guilty. Because shackles are so inherently prejudicial they should not be permitted on a prisoner brought into court for trial except to prevent escape of an accused, to protect individuals in the courtroom, and to maintain order during trial. Woodards v. Cardwell, 430 F.2d 978 (6th Cir. 1970). The shackling of an accused must only be utilized where there is no

other alternative to insure a safe, reasonable, and orderly progress of the trial. Allen, supra. The failure of a court to order alternatives to shackling can result not only in the reversal of a conviction, but also in the reversal of a sentence. Ellidge v. Dugger, 823 F.2d 1439 (11th Cir.), reh.denied 833 F.2d 250 (1987), cert.denied 108 S.Ct. 1487 (1988). Mr. Flack has not caused a disruption in the courtroom in any prior proceeding, nor has he posed any escape or security risk. There is nothing in his present behavior and actions to support a belief that he would be an escape or security threat in his pending trial.

The Kansas Supreme Court has implicitly recognized the danger of publishing photographs of one who is accused of crime while that person is in shackles. Supreme Court Rule 1001, which regulates the press in its recording of proceedings, states in paragraph 11: "... Prior to the rendition of the verdict, criminal defendants shall not be photographed in restraints as they are being escorted to or from court proceedings." And our Supreme Court held long ago that freedom from handcuffs is an important component of a fair trial. State v. Yurk, 203 Kan. 629, 631, 456 P.2d 11 (1969)

WHEREFORE Kyle Flack respectfully requests that this Court grant this motion.

Respectfully submitted,



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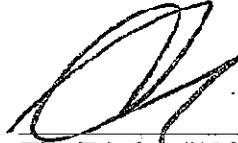
CERTIFICATE OF SERVICE

I hereby certify that on this 10 day of March 2015 a true and correct copy of the foregoing was sent via facsimile to:

Stephen Hunting
c/o Franklin County Attorney's Office
Fax # (785) 229-8971

And a Chamber Copy to:

Hon. Eric Godderz
Fax # (785) 448-3230



Tim Frieden #12022