

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 IN CIVILIAN CLOTHING**

COMES NOW the Defendant, by and through counsel, and hereby respectfully moves this Court to enter an order requiring the Accused's custodians to allow him to dress in civilian clothes.

In support of this motion, the Accused states the following:

1. The Accused is charged with capital murder.
2. There exists no good cause for denying the Accused the right to appear in civilian clothing.
3. Requiring the Accused to display himself in jail clothing will impair the presumption of innocence, 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 jail clothing 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.

**Memorandum of Law**

Doc# 281

The Accused is indigent. Because he cannot afford bail, he is incarcerated in Franklin County on felony charges. The presumption of innocence is a basic component of the fundamental right to a fair trial. Estelle v. Williams, 425 U.S. 501, 96 S.Ct. 1691, 48 L.Ed.2d 126 (1976). That presumption is likely to be impaired if the Accused is required to stand trial in prison clothing. For this reason, the courts have consistently held that such a procedure is improper. See id.; Caito v. Brierly, 485 F.2d 86 (3rd Cir. 1973); Hernandez v. Beto, 443 F.2d 634 (5th Cir. 1971). In Williams, the Court emphasized that: (1) the reminder of the Accused's custodial condition by such distinctive, identifiable attire may affect a juror's judgment; (2) compelling an accused to wear prison clothing furthers no essential state policy; and (3) compelling the accused to stand trial in prison garb usually operates against those who, like the Accused, are poor and cannot post bail before trial.

The right of an accused to appear at trial in civilian clothes is also recognized in Kansas. In State v. Hall, 220 Kan. 712, 714, 556 P.2d 413 (1976), our Supreme Court held that the principles announced in Estelle v. Williams, supra, were incorporated in § 10 of the Kansas Bill of Rights. Our Court stated, "There can be no question that a practice of requiring an accused to stand trial in distinctive prison clothing . . . may result in an unfair trial and may deny the prisoner the presumption of innocence mandated by the Kansas Bill of Rights, § 10 and K.S.A. 21-3109. This practice, if it exists in Kansas, should be discontinued." Hall, 220 Kan. at 714.

For these reasons, the Accused moves this Court for an order allowing him to appear in civilian clothing for trial.

Respectfully submitted,



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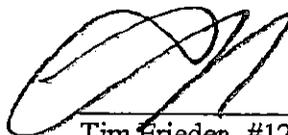
CERTIFICATE OF SERVICE

I hereby certify that on this 10<sup>th</sup> 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