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IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

BRENDA A. UMSTATT
CLERK CIRCUIT COURT
COLE COUNTY, MISSOURI

STATE OF MISSOURI,)
Plaintiff)
)
v.)
)
ALYSSA D BUSTAMANTE,)
Defendant)

Cause No. 09AC-CR03516-01F

Division No. 4

MOTION TO ALLOW ACCUSED TO APPEAR IN HER OWN CLOTHING AND WITHOUT VISIBLE RESTRAINTS AT ALL COURT APPEARANCES

COMES NOW the Accused, Allyssa D. Bustamante, by and through his attorneys, and respectfully moves this Honorable Court to order that she be allowed to dress in her own civilian clothing without visible restraints, during all appearances and while being transported to and from those court appearances, in order to preserve her right to a fair trial by an impartial jury, to due process of law, and to the presumption of innocence as guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article I, Sections 2, 10, 18(a) 19 and 21 of the Missouri Constitution. In support of this motion counsel states the following:

1. This case has already garnered significant pretrial publicity. It is anticipated that media coverage will increase as pretrial hearings progress and the trial approaches.
2. Television news cameras and newspaper photographers have, in the past, filmed or photographed Ms. Bustamante in court and being escorted to and from court. Jail garb is a distinctive color and clearly distinguishable as jail garb.

3. Requiring an accused person to display herself to the jury in jail clothing impairs the presumption of innocence and the fairness of the trial. *State v. Green*, 674 S.W.2d 615, 622 (Mo. App. 1984), *State v. Charron*, 743 S.W.2d 436, 438 (Mo. App. 1987); *Estelle v. Williams*, 425 U.S. 501, 504 (1976).

4. A prisoner can't be forced to appear at trial wearing identifiable prison clothing. *State v. Harris*, 868 S.W.2d 203, 208 (Mo. App., W.D. 1994); *Neal v. State*, 99 S.W.3d 571, 576 (Mo. App., S.D. 2003).

5. The pretrial publicity at each court appearance in this case will indelibly impress upon the eventual jury panel an image of the accused in jail garb.

6. An accused is entitled to appear before the jury unfettered unless good cause for restraints is shown. *See Deck v. Missouri*, 544 U.S. 622 (2007).

In light of this precedent, and of a lower court consensus disapproving routine shackling dating back to the 19th century, it is clear that this Court's prior statements gave voice to a principle deeply embedded in the law. We now conclude that those statements identify a basic element of the 'due process of law' protected by the Federal Constitution. Thus, the Fifth and Fourteenth Amendments prohibit the use of physical restraints visible to the jury absent a trial court determination, in the exercise of its discretion, that they are justified by a state interest specific to a particular trial.

Deck, 544 U.S. at 629. See also , *Holbrook v. Flynn*, 475 U.S. 560 (1986); *Illinois v. Allen*, 297 U.S. 337 (1970); *Lytle v. State*, 762 S.W.2d 830, 834 (Mo. App. 1988).

7. Though the *Deck* opinion addressed shackling of defendants before a jury during penalty phase of trial and did not directly address shackling during pretrial hearings, many of the reasons a defendant shouldn't be shackled or required to wear distinctive jail garb before the jury apply equally to proceedings before the trial judge.

A. "Making a defendant appear in prison garb poses such a threat to the 'fairness of the factfinding process' that it must be justified by an 'essential state policy.'" *Deck*, 544 U.S. at 628, quoting, *Estelle v. Williams*, 425 U.S. 501, 503, 505 (1976).

B. "Visible shackling undermines the presumption of innocence and the related fairness of the factfinding process." *Deck*, 544 U.S. at 630, citing *Coffin v. United States*, 156 U.S. 432, 453 (1895).

C. Shackling in court undermines the right to effective assistance of counsel and "can interfere with the accused's 'ability to communicate' with his lawyer." *Deck*, 544 U.S. at 630, citing *Illinois v. Allen*, 397 U.S. 337, 343-344 (1970).

D. Shackling in court of a party undermines "[t]he courtroom's formal dignity, which includes *the* respectful treatment of defendants, reflects the importance of the matter at issue, *guilt* or innocence, and the gravity with which Americans consider any deprivation of an individual's liberty through criminal punishment. . . . As this Court has said, the use of shackles at trial 'affront[s]' the 'dignity and decorum of judicial proceedings that the judge is seeking to uphold.'"

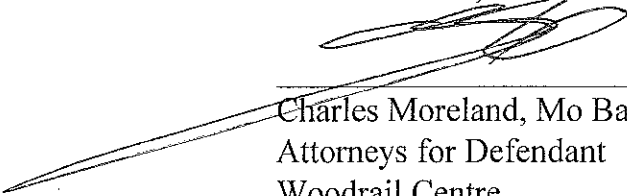
Deck, 544 U.S. at 631, *quoting*, *Allen*, 397 U.S. at 344.

WHEREFORE, for the foregoing reasons the Accused requests this Honorable Court to order that she be allowed to dress in her own civilian clothing, without restraints, during all court appearances and while being transported to and from those court appearances.

Respectfully submitted,

Don Catlett (by com)

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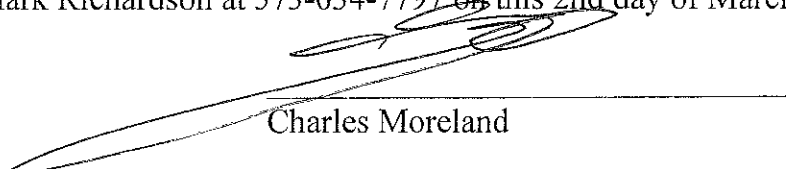
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Certificate of Service

I certify that a true copy of the above and foregoing was served to all parties by fax transmission to Mr. Mark Richardson at 573-634-7797 on this 2nd day of March, 2010.


Charles Moreland