

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT, IN AND
FOR SEMINOLE COUNTY, FLORIDA

FILED IN OFFICE
MARSHALL W. HARRIS
CLERK OF COURT
12 APR 19 AM 8:20
BY SEMINOLE CO. FL
D.C.

STATE OF FLORIDA,

Plaintiff,

vs.

CASE NO.: 2012-001083-CFA

GEORGE ZIMMERMAN,

Defendant.

**MOTION TO PERMIT THE DEFENDANT TO APPEAR IN CIVILIAN CLOTHING
AND WITHOUT RESTRAINTS AT ALL PROCEEDINGS**

COMES NOW the Defendant, GEORGE ZIMMERMAN, by and through his undersigned counsel, and moves this Honorable Court to enter an Order permitting the Defendant, while in custody, to appear at all court proceedings in civilian clothing, instead of a prison uniform, and without restraints. In support of this Motion the Defendant would allege as follows:

1. On April 11, 2012, Mr. Zimmerman was arrested, and charged with the offense of Second Degree Murder in violation of *Florida Statute* Section 782.04, a first degree felony punishable by up to the maximum punishment of life in prison and a \$10,000.00 fine.
2. Mr. Zimmerman is guaranteed a right to a fair trial by an impartial jury under the Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Section 9, 16 and 22 of the Florida Constitution.
3. Mr. Zimmerman is currently being held out without bond at the Seminole County Jail

in Sanford, Florida.

4. Mr. Zimmerman's case has been extensively documented and featured in television and print, both locally and nationally. It is unlikely that the interest by the media in this case will wane any time soon.

5. This Court has been presented with an application to allow members of the press to allow cameras in the courtroom in order to document all further proceedings associated with this case.

6. The manner in which Mr. Zimmerman is portrayed by the media will have a tremendous impact on his ability to receive a fair trial.

7. On April 12, 2012, Mr. Zimmerman appeared in Court for his First Appearance in his jail uniform and shackles. This image of Mr. Zimmerman has been disseminated throughout the world, and is extremely prejudicial to him.

8. Mr. Zimmerman is seeking to prevent such an injustice from occurring again in the future.

**MEMORANDUM OF LAW IN SUPPORT OF THE MOTION TO PERMIT THE
DEFENDANT TO APPEAR IN CIVILIAN CLOTHING AND WITHOUT RESTRAINTS AT
ALL PROCEEDINGS**

The presumption of innocence is a basic component of the fundamental right to a fair trial. *Estelle v. Williams* 425 U.S. 501 (1976). See also, *Coffin v. United States*, 156 U.S. 432 (1895). "The presumption of innocence requires the garb of innocence, and regardless of the ultimate outcome, or the evidence awaiting presentation, every Defendant is entitled to be brought before the court with the appearance, dignity, and self-respect of a free and innocent man." *Kennedy v.*

Cardwell, 487 F.2d 101. (6th Cir. 1973).

This presumption of innocence is likely to be impaired if Mr. Zimmerman is required to appear in court in his jail uniform and restraints. Unless the Court orders the Defendant's custodians to permit him to change into civilian clothing before all court proceedings, his right to receive a fair trial will be impermissibly infringed upon. If Mr. Zimmerman is forced to appear in his jail uniform and restraints during court proceedings, and he is displayed to a potential jury pool in this garb, these potential jurors will naturally be led to doubt his presumption of innocence and, accordingly, his constitutional right to a fair trial will be undermined. This harm is no less severe merely because a jury has yet to be impaneled. In *Estelle*, the Court emphasized that the constant reminder of the accused's condition implicit in such distinctive, identifiable attire may affect a juror's judgment. *Estelle* at 504-505.

"The Fifth and Fourteenth Amendments to the United States Constitution prohibit the use of physical restraints visible to a 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 v. Missouri*, 544 U.S. 622, 629 (2005). "Given their prejudicial effect, due process does not permit the use of visible restraints if the trial court has not taken account of the circumstances of the particular case." *Id.* at 632.

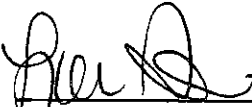
There is no compelling state interest in this case that would require the imposition of any type of physical restraints, and if required to do so, Mr. Zimmerman would suffer extreme prejudice. If Mr. Zimmerman is to appear again in any court proceeding that is covered by the media, the viewing public, from which a jury will be ultimately selected, will be led to a presumption of the Defendant's

guilt. Moreover, the prospective jurors will likely infer that Mr. Zimmerman is restrained because he is dangerous.

WHEREFORE, the Defendant respectfully requests this Honorable Court to enter an Order permitting the Defendant to appear at all court proceedings in civilian clothing and without restraints.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail/Facsimile this 18th day of April, 2012 to Bernie de la Rionda, Assistant State Attorney and John Guy, Assistant State Attorney, Office of the State Attorney, 220 East Bay Street, Jacksonville, Florida 32202-3429.

for  Bar No.: 88865

MARK M. O'MARA, ESQUIRE
Florida Bar No.: 359701
O'Mara Law Group
1416 East Concord Street
Orlando, Florida 32803
Telephone: (407) 898-5151
Facsimile: (407) 898-2468
Attorney for Defendant