

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

FILED IN OPEN COURT THIS
April 20 2012
MARYANNE MORSE
Clerk of Circuit Court
Seminole County, Florida
By: [Signature]
Deputy Clerk

STATE OF FLORIDA

VS.

CASE NO.: 2012-001083-CFA
SA NO: 1712F04573

GEORGE ZIMMERMAN

**STATE'S RESPONSE TO DEFENDANT'S MOTION TO PERMIT DEFENDANT TO APPEAR IN
CIVILIAN CLOTHING AND WITHOUT RESTRAINTS AT ALL PROCEEDINGS**

Defendant, filed a Motion on 4/18/2012 requesting this Honorable Court to permit Defendant, while in custody, to appear at all court proceedings in civilian clothing, instead of a prison uniform, and without restraints.

The State submits the following response to Defendant's Motion:

1. Defendant's Motion cites four federal cases in support of his motion, three of which are more than a quarter century old, and one of which dates from 1895. All four cases dealt with a defendant being dressed in identifiable prison clothes, or wearing restraints **during trial** and the trial jury observed the defendant.
2. The State agrees that a defendant, regardless of the charges or his detention status, should not be dressed in identifiable prison clothes **during a trial** and that any restraints should not be visible **to a trial jury**. The State further notes, however, that it is well-settled that even during trial, "a juror's **or prospective juror's** brief, inadvertent view of a defendant in shackles" does not violate a defendant's right to a fair trial. Phillips v. State, 39 So.3d 296, 307 (Fla. 2010) (emphasis supplied).
3. Defendant in this case is asking at all pretrial proceedings, not just during the trial. Defendant does so on the novel theory that "the manner in which [he] is portrayed by the media will have a tremendous impact on his ability to receive a fair trial." This is, obviously, a false premise designed to provide a foundation for a meritless claim. In fact, when the Defendant actually proceeds to trial ALL jurors (both prospective and seated) will be instructed (Per Standard Jury Instructions 1.0, 1.2, 2.1) that they are not to consider matters discussed or portrayed about the case outside the courtroom, including media both print and electronic. Jurors are **presumed to follow instructions**. Sutton v.

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State, 718 So.2d 215 (Fla. 1st DCA 1998); indeed, even Defendant makes no allegation that they would somehow, in this particular case, be unable to do so. Other remedies, of course, also exist, not the least of which include *voir dire* on the subject and alternate venue proceedings.

4. Legitimate reasons exist for all detained inmates (not just Defendant in this case) to wear shackles and distinct uniforms when outside of the physical jail. Escape is made much more difficult, both by the shackles and the fact that jail uniforms are easily distinguishable from civilian attire should a defendant escape immediate supervision.
5. Defendant's complaint, at bottom, rests upon speculation that, at some future time, some future possible juror might remember, because Defendant appeared in a jail jumpsuit on TV at some point (which has already occurred), that Defendant was *arrested* for the instant crime. Since this information is conveyed to nearly every juror in every case (when discussing the presumption of innocence), and has yet to be documented anywhere in the caselaw as being prejudicial to any right possessed by a defendant, the Court should not indulge Defendant in his current endeavor to essentially create a "right to have the cameras photograph him in the best possible light".
6. Defendant incorrectly assumes that potential Florida jurors will not have the ability to follow the laws and instructions of the court, when the time of jury selection actually occurs. The State does not share this perception. Nor, it seems, does the Supreme Court of Florida, which considers that publicity alone will not result in a deprivation of Defendant's rights:

The test for determining a change of venue is whether the general state of mind of the inhabitants of a community is so infected by knowledge of the incident and accompanying prejudice, bias, and preconceived opinions that jurors could not possibly put these matters out of their minds in order to try the case solely on the evidence presented in the courtroom. *McCaskill v. State*, 344 So.2d 1276, 1278 (Fla.1977). Thus, **trial courts are encouraged to attempt to impanel a jury before** ruling on a motion for change of venue because this provides an opportunity to determine through *voir dire* whether individuals who have not been seriously infected by the publicity can be found. See *Davis v. State*, 461 So.2d 67, 69 n. 1 (Fla.1984) (stating motion for change of venue should not be ruled upon prior to jury selection because an impartial jury may be seated if court finds credible the assurances of prospective jurors that they can set aside extrinsic knowledge and decide the case on the evidence); *Manning v. State*, 378 So.2d 274, 276 (Fla.1979) (approving procedure where ruling on defendant's motion for change of venue is delayed until attempt has been made to select jury). . . **Furthermore, the mere fact that jurors were exposed to pretrial publicity is not enough to raise the presumption of unfairness.** See *Castro v. State*, 644 So.2d 987, 990 (Fla.1994). It is sufficient if the juror can lay aside his or her opinion or impression and render a verdict based on the evidence presented in court. See *id.*; *Bundy v. State*, 471 So.2d 9, 19 (Fla.1985).

Armstrong v. State, 862 So. 2d 705, 719 (Fla. 2003) (emphasis supplied).

7. Indeed, Defendant appears to be *affirmatively courting* a more positive "media image" via the instant Motion; certainly, the State hopes Defendant is not suggesting that he should be permitted to intentionally manipulate the perceptions of jurors who the law requires ignore any such perceptions.

WHEREFORE, the State requests this Honorable Court Deny Defendant's Motion.

CERTIFICATE OF SERVICE

I HERBY CERTIFY that a copy of the foregoing has been furnished by email and fax to Mark O'Mara, Esq., and the Honorable Judge Kenneth R. Lester Jr. (Judicial Assistant Marilyn McAllister) this 19th day of April, 2012.

ANGELA B. COREY
STATE ATTORNEY

By: 

Bernardo de la Rionda
Bar Number: 365841
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