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11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
12 **IN AND FOR THE COUNTY OF MARICOPA**

13 **STATE OF ARIZONA,**

14 Plaintiff,

15 vs.

16 **JUSTIN JAMES RECTOR**

17 Defendant.

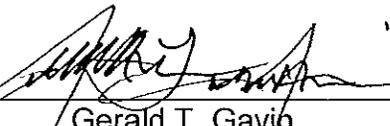
NO: CR 2014 - 01193

**MOTION TO PERMIT MR. RECTOR TO  
APPEAR IN CIVILIAN CLOTHING AND  
WITHOUT RESTRAINT AT ALL  
PROCEEDINGS AND ALL PRETRIAL /  
AND/ TRIAL PHASES**

(ASSIGNED TO THE HON. LEE JANTZEN)

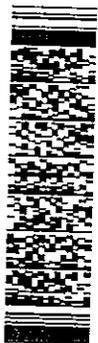
18 Defendant Justin James Rector, by and through undersigned counsel,  
19 respectfully moves this court to allow Justin Rector to appear at all in-court proceedings  
20 (including all pretrial hearings) in civilian clothing instead of a jail striped uniform and  
21 without restraint, including handcuffs, shackles or stunbelt. In addition, once the trial  
22 begins, Defendant requests that measures be taken to ensure that the jurors never see  
23 him in jail uniforms or restraint at any time. This motion is supported by the  
24 Memorandum of Points and Authorities attached hereto and incorporated herein.

25 **RESPECTFULLY SUBMITTED** this 28<sup>th</sup> day of April, 2015.

26 By:   
27 Gerald T. Gavin  
28 Defendant's Co-Counsel

By:   
Ron Gilleo  
Defendant's Co-Counsel

S8015CR201401193





1 v. Jodi Arias to see the impact of such media reports, and the circus-like  
2 atmosphere it created. In that case many stories aired regarding her appearance: her  
3 glasses, her resemblance to one of her counsel, her hair, her outfits. Either way, this  
4 sensationalized "news" serves to taint our local jury pool with distorted facts,  
5 editorialized opinions, graphic descriptions of statements and graphic audio and/or  
6 video displays that, in a criminal trial, may otherwise be prevented from jury view by the  
7 Arizona Rules of Evidence. Requiring Mr. Rector to wear prison garb at pretrial  
8 proceedings furthers no compelling State interest, but would violate Mr. Rector's rights  
9 as recognized in Estelle.

#### 10 **APPEARANCE WITHOUT CONSTRAINT**

11 Mr. Rector contends that there are no facts specific to this case justifying  
12 restraint during pretrial or trial proceedings...including methods like a stunbelt,  
13 handcuffs, leg shackles, or other similar tools of confinement. "The Fifth and Fourteenth  
14 Amendments [of the United States Constitution] prohibit the use of physical restraints  
15 visible to the jury absent a trial court determination, in the exercise of its discretion that  
16 they are justified by a State interest specific to a particular trial." Deck v. Missouri, 544  
17 U.S. 622, 629 (2005). "[G]iven their prejudicial effect, due process does not permit the  
18 use of visible restraints if the trial court has not taken account of the circumstance of a  
19 particular case." Id. at 632. In Deck, the defendant was visibly shackled during the  
20 sentencing phases of a capital murder case. Id. at 2010. The Court began by noting that  
21 "[t]he law has long forbidden routine use of visible shackles during the guilt phase; it  
22 permits a State to shackle a criminal defendant only in the presence of special need."  
23 Id. at 2012. "[A]bsent a trial court determination...that [shackles] are justified by a state  
24 interest specific to a particular trial," such as security concerns or risk of escape, the use  
25 of visible physical restraints is prohibited." Id.

1           Deck considered for the first time whether the general rule against shackling  
2 during the guilt phase should be extended to the sentencing phases of a capital  
3 proceeding held before a jury. The Court held that “[t]he considerations that militate  
4 against the routine use of visible shackles during the guilt phase of a criminal trial apply  
5 with like force to penalty phase proceedings in capital cases.” Id. at 2014. The Court  
6 emphasized that “[t]he appearance of the offender during the penalty phase in  
7 shackles... almost inevitably implies to the jury, as a matter of common sense, that court  
8 authorities consider the offender a danger to the community” and that shackling “almost  
9 inevitably affects adversely the jury’s perception of the character of the defendant.” Id.

10           Deck recognized the importance restraint plays in shaping the perception of  
11 accused; a defendant has an interest in appearing free of restraint in order to preserve  
12 the presumption of innocence, due process rights, and effective assistance of counsel.  
13 Continuing on, should a guilty plea result, the interest morphs because “[a]lthough the  
14 jury is no longer deciding between guilt and innocence, it is deciding between life and  
15 death. That decision, given the ‘severity’ and ‘finality’ of the sanction, is no less  
16 important that the decision about guilt. Id.

17           In State v Gomez, the Arizona Supreme Court, following Deck, reiterated the rule  
18 ,phase of trial absent justification on the record that there were “indisputably good  
19 reasons for shackling.” 211 Ariz. 494, 503, ¶ 46, 123 P.3d 113, 1140 (2005) (internal  
20 quotations omitted). In Gomez, the shackles were visible and there was no record of  
21 defendants in prison garb.” Id. at 504, ¶¶ 47-48, 123 P.3d at 1141.  
22

23           The same rules apply for restraining devices that are hidden from the view of the  
24 jury. In State v. Mills, the trial court precluded the use of handcuffs or shackles during  
25 trial, but did not preclude other restraints. 196 Ariz. 269, 272, ¶ 13, 995 P.2d 705, 708  
26 (App. 1999). As a result, and without objection, the defendant was restrained by leg  
27 brace underneath his clothes. On appeal, the Court found the defendant had waived the  
28

1 issue by failing to object. However, the Court noted that if the defendant had made a  
2 proper objection at trial"...the state would have been required to establish 'some reason'  
3 for restraint in the courtroom." Mills, 196 Ariz. at 273, ¶15, 995 P.2d at 709. The trial  
4 court would then be required to use its discretion to determine whether a restraint was  
5 necessary. See State v. Bracy, 145 Ariz. 520, 532, 703 P.2d 464, 476 (1985), *cert.*  
6 *denied*, 474 U.S. 1110, 106 S.Ct. 898, 88 L.Ed.2d 932 (1986).

7 The Federal and State Constitutions guarantee a criminal defendant the right to  
8 effective assistance of counsel. U.S. Constitutional Amendments VI, XIX; the Arizona  
9 "The use of physical restraints diminishes that right. Shackles can interfere with the  
10 accused's 'ability to communicate' with his lawyer. Indeed, they can interfere with a  
11 defendant's ability to participate in his own defense, say by freely choosing whether to  
12 take the witness stand on his own behalf." Deck, 544 U.S. at 631.

13 Mr. Rector specifically asserts that there is no justification for restraining him by  
14 use of a stunbelt. Mr. Rector anticipates the State may contend that, unlike old-  
15 fashioned shackles, a stunbelt does not run afoul of the edicts against restraining trial  
16 defendant's without cause. Therefore any such contention made by the State fails  
17 because, like chains and shackles, a stunbelt remains visible to the public and jurors,  
18 and it restrains and distracts with psychological fear and anxiety in anticipation of an  
19 unexpected painful shock, which imparts on the defendant's demeanor and thought  
20 process in ways inimical to the constitutional rights at issue in Deck.

21 The decision to use restraints is committed to the discretion of the trial court, but  
22 because their use is an "inherently prejudicial practice, restraints may be employed only  
23 as a last resort," Holbrook v. Flynn, 475 U.S. 560, 568-69 (1986). When exercising this  
24 discretion, the court *must* hold a hearing to determine whether such measures are  
25 necessary. Id. at 569. The trial court must make a finding restraint entails more than  
26 mere deference to the opinion of the law enforcement personnel charged with keeping  
27  
28

1 the accused in custody. Woodwards v. Cardwell, 430 F.2d 978, 981-82 (6<sup>th</sup> cir. 1970)  
2 (noting the "preferred and encouraged practice" of holding a hearing prior to restraining  
3 a defendant with handcuffs).

4 This court must guard against heightened security precautions that make the  
5 accused look like a dangerous individual. If Mr. Rector is convicted, then during the  
6 mitigation phase excessive security and/or restraints create the risk that jurors will  
7 consider "future dangerousness" when adjudicating the sentence, and that is an invalid  
8 (and hence unconstitutional) aggravating factor in Arizona. See generally Stringer v.  
9 Black, 503 U.S. 222, 232 (1992) (finding it is constitutional error when an invalid  
10 aggravator is placed on "death's side of the scales"). Moreover, excessive security  
11 would deprive Mr. Rector of a possible mitigating factor: his likelihood of adjusting to  
12 incarceration. Skipper v. South Carolina, 476 U.S. 1.4-5 (1986).

14 There is also a potential for substantial prejudice if Mr. Rector is required to  
15 appear in restraints during the pre-trial proceedings. The harm is no less serious merely  
16 because the jury has yet to be empanelled. If Mr. Rector appears in restraints during  
17 any pretrial proceeding covered by television or print media, the viewing public, from  
18 which the jury will be selected, will be led to a presumption of his guilt. Moreover, the  
19 prospective jurors will likely infer that Mr. Rector is restrained because he is dangerous.

20 Providing adequate and routine courtroom security serves as a reasonable  
21 alternative to restraining Mr. Rector. Instead of utilizing restraints, this Court can simply  
22 employ standard courtroom security personnel to ensure order and decorum- on the  
23 assumption that the number of security persons employed does not, in and of itself,  
24 overwhelm Mr. Rector's presumption of innocence; there is nothing to support, in this  
25 case, more being needed.  
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1  
2 **DUE PROCESS IN CAPITAL CASES**

3 Supreme Court's jurisprudence has made evident, death is different; for that reason  
4 more due process is due, not less. See Lockett v Ohio, 438 U.S. 586, 605 (1978);  
5 Woodsen v. North Carolina, 428 U.S. 280, 305 (1976)(plurality opinion). It is well-  
6 settled that "when a State opts to act in a field where its actions has significant  
7 discretionary elements, it must nonetheless act in accord with the dictates of the  
8 Constitution-and in particular, in accord with the Due Process Clause." Evitts v. Lucey,  
9 469 U.S. 387, 401 (1985). This is all the more so when a petitioner's life interest,  
10 protected by the "life, liberty and property" language in Due Process Clause, is at stake  
11 in the proceeding. Ohio Adult Parole Authority v. Woodard, 523 U.S. 272, 288 (1998)  
12 (O'Conner, Souter, Ginsberg, and Breyer, J.J., concurring); id. at 291 (Stevens, J.  
13 dissenting) (recognizing a distinct, continuing, life interest protected by the Due Process  
14 Clause in capital cases). All measures must be taken to prevent arbitrary, cruel and  
15 unusual results in a capital trial. See Lockett, 438 U.S. at 604; Woodson, 428 U.S. at  
16 304-05.  
17

18 For the above stated reasons, Mr. Rector requests this Court allow him to  
19 appear, as a man presumed innocent by law, in ordinary civilian clothes and without  
20 restraints in all in-court proceedings, and any other time the media or jurors might view  
21 Mr. Rector.  
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1 ORIGINAL of the foregoing filed  
2 this 28th day of April, 2015 with:

3 Clerk of Court  
4 Mohave County Courthouse  
401 E Spring Street  
5 Kingman Arizona 86401

6 COPY of the foregoing handdelivered  
7 this 28th day of April, 2015 to:

8 Honorable Lee Jantzen  
9 Judge of the Superior Court  
10 Mohave County Courthouse  
401 E. Spring Street  
Kingman Arizona 86401

11 Greg McPhillips  
12 Assigned Deputy County Attorney  
13 PO Box 7000  
Kingman Arizona 86401

14 Don Bischoff/ Director Mohave County Detention  
15 James Schoppman / Legal Counsel / Mohave County Detention  
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19 Mohave County Legal Defender  
20 Co-Counsel for Justin James Rector  
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21 Client Justin James Rector  
22 Mohave County Jail

23 File

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By  \_\_\_\_\_