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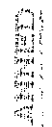
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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MOHAVE

STATE OF ARIZONA,) NO. CR-2005-718
)
)
Plaintiff,) **MOTION TO PERMIT**
) **DEFENDANT TO APPEAR**
) **IN CIVILIAN CLOTHING**
vs.)
)
)
WARREN STEED JEFFS,)
)
)
Defendant.) [Hon. Steven F. Conn]
)

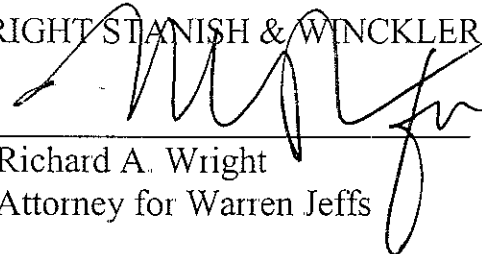
Defendant, Warren Jeffs, by and through his undersigned attorney, requests this Court to issue its order permitting the Defendant to appear with Counsel and wear civilian clothing at his arraignment, at all pre-trial proceedings and at the trial in this matter. This motion is based on the legal reasoning and authority set forth in the attached Memorandum of Points and Authorities.

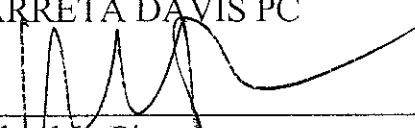


1 RESPECTFULLY SUBMITTED this 19th day of February, 2008.

2 WRIGHT STANISH & WINCKLER

3 PICCARRETA DAVIS PC

4 By 
Richard A. Wright
5 Attorney for Warren Jeffs

6 By 
Michael L. Piccarreta
7 Jefferson Keenan
8 Attorneys for Warren Jeffs

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **I. STATEMENT OF FACTS**

11 As the Court may be aware, previous proceedings in the State of Utah
12 involving Mr. Jeffs garnered an extraordinary amount of media attention. The
13 Judge in that case recognized the prejudice to Mr. Jeffs resulting from the
14 appearing in prison clothing and having those images widely disseminated among
15 potential jurors. Accordingly, he ordered that Mr. Jeffs be permitted to appear at
16 all pre-trial proceedings in civilian clothing. The Court's order is attached hereto.
17 There is little doubt in the present case that every court appearance by Mr. Jeffs
18 will also be extensively covered in the media. It is the Defendant's position that,
19 due to the massive amounts of unfavorable media coverage that has already been
20 generated, Mr. Jeffs will not be able to get a fair trial in Mohave County, and he
21 will be moving for a change of venue on that basis. Any additional photos and
22 images of Mr. Jeffs in prison garb at this time will simply add to that prejudice.
23 Accordingly, Mr. Jeffs requests that this Court issue its order permitting him to
24 appear at all pre-trial proceedings and at trial in civilian clothing.
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1 **II. ARGUMENT**

2 It is well settled that a prisoner's appearance indicative of his status as an
3 inmate serves as a "constant reminder of the accused's condition" that "may affect
4 a juror's judgment" and constitutes such a "continuing influence . . . that . . . an
5 unacceptable risk is presented of impermissible factors coming into play" *Estelle*
6 *v. Williams*, 425 U.S. 501, 504-05 (1976). This type of prejudice implicates a
7 defendant's constitutional right to a fair trial, and a defendant cannot "be
8 compelled by the state to appear before a jury in prison attire". *State v. Garcia-*
9 *Contreras*, 191 Ariz. 144, 146, 953, P.2d 536, 538 (1998) [citing *Estelle*]
10 Moreover, "compelling an accused to wear jail clothing where there is no essential
11 state policy". *Estelle*, 425 U.S. at 505.
12

13 In a case involving widely disseminated pre-trial images of the Defendant,
14 these factors apply equally to potential jurors who may be exposed to these
15 prejudicial images. The media surrounding Mr. Jeffs has clearly been
16 extraordinary and will require careful diligence on the part of the Court to protect
17 the defendant's rights. Although this precise issue has apparently not been
18 addressed by Arizona courts, the Montana Supreme Court has expressly addressed
19 these concerns:
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25 [W]e remind the trial courts that they have a duty to avoid potential
26 prejudice caused by the appearance of a defendant at trial or during
27 preliminary appearances. We have opened up the courts to the news
28 media, including picture taking and television cameraman. With this

1 goes the chance that pretrial publicity, including pictures of a
2 defendant in jail or prison clothes and handcuffed, can affect his right
3 to a fair trial. The defendant is presumed innocent and it is
4 demeaning to haul him into court in jail clothes and handcuffed.
5 Surely other arrangements can be made when defendants who are
6 still in custody must appear in court. This Court has seen pictures of
7 defendants in jail clothes and in handcuffs displayed on the front
8 pages of major newspapers in this state. We have given the news
9 media the right to take pictures, but we have not given trial courts the
10 right to require the defendant to appear in jail clothes and
11 handcuffed. We urge the trial courts to stop this practice and to order
12 the custodial officials to bring defendants into court dressed in their
13 own clothes and not handcuffed. The inconveniences to the custodial
14 official cannot override the defendants right to fair treatment when
15 appearing in court.

16 *State v Rodriguez*, 192 Mont. 411, 419-20, 628 P.2d 280, 285 (1981).

17 The court ultimately found no prejudice to the defendant in that case
18 because his claim of prejudice was based on “an undocumented claim that
19 television cameramen had been present at the preliminary hearing and that pictures
20 of the defendant in handcuffed and in jail clothing had been televised in the
21 Billings area that night.” *Id*, at 419, 628 P.2d at 284. In contrast, due to the
22 particular circumstances of the present case, it will be well documented that every
23 appearance of the defendant will be extensively disseminated throughout the
24 media. For all of the reasons set forth in *Rodriguez* and *Estelle*, this Court can
25 eliminate this prejudice by simply not allowing it to occur.

26 In addition to the concerns raised in *Rodriguez*, there is also the due process
27 problem discussed in *Estelle*. Regarding the wearing of jail clothing to trial, the
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1 United States Supreme Court noted that “[p]ersons who can secure release are not
2 subjected to this condition.” *Estelle*, 425 U.S. at 505. This is clearly equally true
3 of defendants during pre-trial stages as well. Certainly, those who are released
4 pending trial make all pretrial appearances in civilian clothing. “To impose the
5 condition on [only] one category of defendants, over objection, would be
6 repugnant to the concept of equal justice embodied in the Fourteenth
7 Amendment” *Id.*, 425 U.S. at 505-06 [citing *Griffin v. Illinois*, 351 U.S. 12
8 (1956)]. To require Mr. Jeffs to make pretrial appearances in jail attire would
9 violate his due process rights. Again, because “compelling an accused to wear jail
10 clothing furthers no essential state policy,” *id.*, the State has little or nothing to
11 gain, while the defendant has much to lose, when considering whether he should
12 be allowed to wear civilian clothing for his pre-trial appearances
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17 Finally, Mr. Jeffs asserts that the risk of tainting of his jury pool with
18 prejudicial images of pretrial appearances in jail clothing cannot be effectively
19 cured through the process of *voir dire*. As Justice Brennan observed in his dissent
20 to *Estelle*:

21
22 Identifiable prison garb robs an accused of the respect and dignity
23 accorded to other participants in a trial and constitutionally due the
24 accused as an element of the presumption of innocence, and surely
25 tends to brand him in the eyes of the jurors with an unmistakable
26 mark of guilt.

27 The prejudice may only be subtle and jurors may not even be
28 conscious of its deadly impact, but in a system in which every person

1 is presumed innocent until proved guilty beyond a reasonable doubt,
2 the Due Process Clause forbids toleration of the risk. Jurors required
3 by the presumption of innocence to accept the accused as a peer, an
4 individual like themselves who is innocent until proved guilty, may
5 well see an accused garbed in prison attire an obviously guilty person
6 to be recommitted by them to the place where his clothes clearly
7 shows he belongs. It is difficult to conceive of any other situation
8 more fraught with risk to the presumption of innocence and the
9 standard of reasonable doubt.

10 *Estelle*, 425 U.S. at 518-19 [Brennan, J. dissenting] [emphasis added].

11 Jurors, who may not even be conscious of their own prejudice from viewing
12 an accused in prison attire, surely will not be able to be questioned satisfactorily
13 about the matter in the *voir dire* process. Rather than attempting to use *voir dire* to
14 eradicate the prejudice created by prison attire, the defendant submits that the
15 problem can be eliminated all together by permitting Mr. Jeffs to make all of his
16 pretrial appearances in civilian clothing.

17 **III. CONCLUSION**

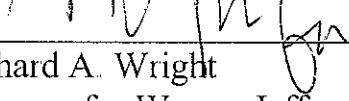
18 There can be little doubt that the media coverage of the proceedings
19 involving Mr. Jeffs, as in the Utah proceedings, will be extraordinary. Given the
20 wide dissemination of media coverage of proceedings involving Mr. Jeffs, the
21 subtle yet dangerous prejudicial effect of pretrial appearances in jail attire cannot
22 likely be avoided by *voir dire*. The defendant clearly cannot be compelled to
23 wear jail attire during the trial, and the defendant contends that the risks associated
24 with appearing at trial in such attire, both to the presumption of innocence and to
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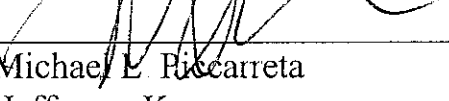
1 Due Process, extend also to pretrial appearances. The obvious and undeniable risk
2 to the pool of potential jurors is especially acute in a case with extensive media
3 coverage. Even if *voir dire* could offer some semblance of protection against the
4 risk, the gain to the State by denying the defendant's request to appear in civilian
5 clothing would be minimal or nonexistent. For the foregoing reasons, Mr. Jeffs,
6 by and through his undersigned attorney, respectfully requests the Court to allow
7 him to wear civilian clothing during all appearances, both before and during his
8 trial.
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12 RESPECTFULLY SUBMITTED this 19th day of February, 2008

13 WRIGHT STANISH & WINCKLER

PICCARRETA DAVIS PC

14
15 By 
16 Richard A. Wright
Attorney for Warren Jeffs

14
15 By 
16 Michael E. Piccarreta
Jefferson Keenan
Attorneys for Warren Jeffs

17 Copy of the foregoing mailed this
18 19th day of February 2008 to:

19 Clerk of Court
20 Mohave County Superior Court
21 401 East Spring Street
22 Kingman, AZ 86401

23 Copy of the foregoing mailed & faxed
24 this 19th day of February, 2008 to:

25 Hon Steven F. Conn
26 Mohave County Superior Court
27 401 East Spring Street
28 Kingman AZ 86401

Copy of the foregoing mailed & emailed
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Attorneys for Defendant

**IN THE FIFTH DISTRICT COURT
WASHINGTON COUNTY, STATE OF UTAH**

STATE OF UTAH,

Plaintiff,

vs.

WARREN STEED JEFFS,

Defendant

**ORDER TO PERMIT DEFENDANT TO
APPEAR IN OPEN COURT AND TO
WEAR CIVILIAN CLOTHING**

Case No. 061500526

Judge James L. Shumate

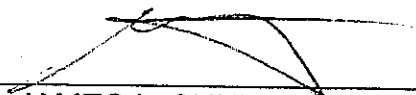
Pursuant to the Motion of Defendant and good cause appearing, IT IS HEREBY ORDERED that Mr. Jeffs be transported to the courthouse to appear with counsel on September 27, 2006 at 8:30 a.m. and at all future pre-trial hearings.

IT IS FURTHER ORDERED that Mr. Jeffs be permitted to wear civilian clothing at all court proceedings.

FILED

DATED this 22 day of September, 2006.

BY THE COURT:



HON. JAMES L. SHUMATE

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that, on the ___ day of September, 2006, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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Washington County Attorney
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